

# SEXUAL ORIENTATION AND GENDER IDENTITY IN HUMAN RIGHTS LAW

References to Jurisprudence and Doctrine of the  
United Nations Human Rights System

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2010  
Fourth updated edition



INTERNATIONAL  
COMMISSION  
OF JURISTS



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This fourth edition was updated and prepared by Derek Inman under the supervision of Allison Jernow, Senior Legal Adviser at the ICJ.

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## INTRODUCTION

The ICJ is pleased to publish this fourth edition of references to sexual orientation and gender identity within the United Nations human rights system. The fourth edition is a comprehensive collection of jurisprudence, general comments, concluding observations, and reports from human rights treaty bodies and independent experts (also known as Special Procedures) of the UN Charter-based system.<sup>1</sup> In addition, it includes speeches and press releases from the Office of the High Commissioner for Human Rights; the Joint Statement on Human Rights, Sexual Orientation and Gender Identity, signed by 66 States and presented to the General Assembly in December 2008; and excerpts from the UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity. This UN compilation covers the time period January 2007 through March 2010. Earlier editions of the UN compilation are available on the ICJ website at [www.icj.org](http://www.icj.org).

The three previous editions of the UN compilations have been relied upon extensively by lawyers, civil society groups, and human rights defenders. In this edition, the ICJ has made changes to the structure and format in order to facilitate its use. Each entry is annotated with a key word or key words, reflecting the topic or topics discussed. All key words are listed in the Index. The inclusion of these search terms should make it easier to identify relevant decisions and comments.

Annex I contains the most important jurisprudence and references to sexual orientation and gender identity from the earlier editions. Specifically, the 1994 landmark decision of the UN Human Rights Committee, *Toonen v. Australia*, which held that Articles 17 and 26 of the International Covenant on Civil and Political Rights prohibit discrimination on the grounds of sexual orientation and protected private sexual activity, is included here. Relevant General Comments from the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of the Child are included as well.<sup>2</sup> Together with *Toonen*, these General Comments establish that the prohibition on discrimination contained in these human rights treaties encompasses discrimination on the basis of sexual orientation. Annex II contains the most relevant articles from the international instruments referred to by the treaty bodies and Special Procedures of the UN human rights system.

A few observations about sexual orientation, gender identity, and human rights, as reflected in the work of the UN human rights system, are in order.

First, references to sexual orientation and to gender identity are increasingly common. Six of the eight principal human rights treaty bodies regularly refer to sexual orientation and gender identity.<sup>3</sup> A majority of the thematic mandates also regularly refer to issues concerning sexual orientation and gender identity.

Second, both the concluding observations of the treaty bodies when reviewing States' periodic reports and the reports of the special procedures offer a clear picture of the range of violations faced by lesbian, gay, bisexual and transgender people. State-sponsored expressions of homophobia range from the criminalization of same-sex sexual activity to officially sanctioned discrimination in access to jobs, health care, education, and housing.

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<sup>1</sup> The Special Procedures consist of Working Groups, Special Representatives, Special Rapporteurs and other independent experts established by either the Commission on Human Rights or its successor the Human Rights Council.

<sup>2</sup> The human rights treaty bodies publish their interpretation of the content of human rights provisions in the form of general comments on thematic issues.

<sup>3</sup> These six are the Committee on Civil and Political Rights, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee Against Torture.

Transgender persons are prevented from changing their gender on official documents. In many countries, LGBT individuals simply do not have the same protection and enjoyment of rights that are supposed to be universally guaranteed. For example, they are denied permission to form associations or organizations, they are prevented from holding parades or demonstrations, and even their speech is censored. Without the rights of freedom of association, assembly, and expression, they are rendered invisible. Official discrimination, in turn, signals to the wider public that LGBT people, or those perceived as being non-conforming in their sexual orientation, gender identity, or gender expression, are appropriate targets for abuse. At the hands of non-state actors, LGBT individuals are frequent victims of hate speech and hate violence. And because police harassment and abuse is also common, victims often have nowhere to turn for help.

Third, rights are interrelated. A single act or event can produce multiple violations. A law that criminalizes same-sex sexual activity not only runs counter to the rights to privacy and non-discrimination contained in the International Covenant on Civil and Political Rights, it also drives vulnerable populations underground and prevents them from accessing treatment, thus undermining their right to health guaranteed in the International Covenant on Economic, Social and Rights. Arrest and detention of same-sex couples solely on grounds of their sexual orientation or private consensual sexual activity, is not only in breach of the non-discrimination guarantee, it also breaches the guarantee on freedom from arbitrary detention. Restrictions on freedom of expression and peaceful assembly impact not only LGBT individuals and groups, but also the essential work of human rights defenders.<sup>4</sup>

Finally, although this picture is indeed bleak, it is also evident that the international human rights system promotes and protects the human rights of everyone, regardless of sexual orientation or gender identity. The treaty bodies and special procedures of the UN regularly and consistently urge States to reform penal legislation, to decriminalize consensual adult sexual activity,<sup>5</sup> to end police abuse,<sup>6</sup> and to enact non-discrimination laws that protect everyone.<sup>7</sup> Violations are documented and governments are called to account. The human rights mechanisms are thus deeply engaged in the project of universality – sending the strong message that all human rights are interdependent and universal. In the words of the UN High Commissioner for Human Rights, “The principle of universality admits no exception. Human rights truly are the birthright of all human beings.”<sup>8</sup>

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<sup>4</sup> See, for example, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/C/37/Add.1, 27 March 2007, para. 511 (Nigeria)

<sup>5</sup> See, for example, Concluding Observations on Grenada, CCPR/C/GRD/CO/1, 14 August 2009, para. 21; Concluding Observations on Tanzania, CCPR/C/TZA/CO/4, 6 August 2009, para. 22; Concluding Observations on Zambia, CCPR/C/ZMB/CO/3, 9 August 2007, para. 24; Concluding Observations on Barbados, CCPR/C/BRB/CO/3, 11 May 2007, para. 13.

<sup>6</sup> See, for example, Concluding Observations on Azerbaijan, CCPR/C/AZE/CO/3, 13 August 2009, para. 19; Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/10/12/ADD.1, 4 March 2009, para. 1247 (India); para. 1558-1562 (Kyrgyzstan); para. 2574-2577 (Turkey); para. 2608-2613 (Uganda)

<sup>7</sup> See, for example, Concluding Observations on Russia, CCPR/C/RUS/CO/6, 29 October 2009, para. 27; Concluding Observations on Japan, CCPR/C/JPN/CO/5, 18 December 2008, para. 29; Concluding Observations on Poland, E/C.12/POL/CO/5, 19 January 2010, para. 12; Concluding Observations on Republic of Korea, E/C.12/KOR/CO/3, 17 December 2009, para. 9.

<sup>8</sup> Address by Ms. Navanethem Pillay, UN High Commissioner for Human Rights, 63<sup>rd</sup> session of the General Assembly, New York, 18 December 2008.

## I. HUMAN RIGHTS TREATY BODIES

### A. HUMAN RIGHTS COMMITTEE

<http://www2.ohchr.org/english/bodies/hrc/index.htm>

#### i. JURISPRUDENCE

**Keywords:** partnership benefits, discrimination

**Communication No. 1361/2005: Colombia, CCPR/C/89/D/1361/2005, X v. Colombia, 14 May 2007.**

*Consideration of the merits*

7.2 The Committee notes that the author was not recognized as the permanent partner of Mr. Y for pension purposes because court rulings based on Act No. 54 of 1990 found that the right to receive pension benefits was limited to members of a heterosexual de facto marital union. The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. It also recalls that in previous communications the Committee found that differences in benefit entitlements between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry or not, with all the ensuing consequences. The Committee also notes that, while it was not open to the author to enter into marriage with his same-sex permanent partner, the Act does not make a distinction between married and unmarried couples but between homosexual and heterosexual couples. The Committee finds that the State party has put forward no argument that might demonstrate that such a distinction between same-sex partners, who are not entitled to pension benefits, and unmarried heterosexual partners, who are so entitled, is reasonable and objective. Nor has the State party adduced any evidence of the existence of factors that might justify making such a distinction. In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author's right to his life partner's pension on the basis of his sexual orientation.

(...)

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, considers that the facts before it disclose a violation by Colombia of article 26 of the Covenant.

9. In accordance with the provisions of article 2, paragraph 3 (a), of the Covenant, the Committee finds that the author, as the victim of a violation of article 26, is entitled to an effective remedy, including reconsideration of his request for a pension without discrimination on grounds of sex or sexual orientation. The State party has an obligation to take steps to prevent similar violations of the Covenant in the future.

ii. CONCLUDING OBSERVATIONS

**Russia, CCPR/C/RUS/CO/6, 29 October 2009**

**Keywords:** freedom of association, discrimination, freedom of assembly, hate speech, police

27. The Committee is concerned about acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including reports of harassment by the police and incidents of people being assaulted or killed on account of their sexual orientation. The Committee notes with concern the systematic discrimination against individuals on the basis of their sexual orientation in the State party, including hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media. The Committee is also concerned about discrimination in employment, health care, education and other fields, as well as the infringement of the right to freedom of assembly and association and notes the absence of legislation that specifically prohibits discrimination on the basis of sexual orientation. (art. 26)

The State Party should:

(a) provide effective protection against violence and discrimination based on sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of discrimination on the ground of sexual orientation;

(b) intensify its efforts to combat discrimination against LGBT persons, including by launching a sensitization campaign aimed at the general public as well as providing appropriate training to law enforcement officials.

(c) take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.

The State party should also define the concept of “social groups” as stipulated in section 148 of the Criminal Code in a manner that does not include organs of the state or public officials.

**Grenada, CCPR/C/GRD/CO/1, 14 August 2009**

**Keywords:** decriminalization

21. The Committee notes with concern that the Criminal Code penalizes same-sex sexual activities between consenting adults (arts. 17 and 26).

The State party should repeal these provisions of its laws.

**Azerbaijan, CCPR/C/AZE/CO/3, 13 August 2009**

**Keywords:** police, prison officials

19. The Committee is concerned at reports that individuals have been harassed by police and prison officials because of their sexual orientation (art. 26).

The State party should take measures in this respect by providing training activities to its law enforcement and penitentiary authorities and by elaborating a relevant code of conduct.

**Tanzania, CCPR/C/TZA/CO/4, 6 August 2009**

**Keywords:** decriminalization

22. The Committee reiterates its concern at the criminalization of same-sex sexual relations of consenting adults, and regrets the lack of measures taken to prevent discrimination against them. (arts. 2, 17 and 26)

The State party should decriminalize same-sex sexual relations of consenting adults and take all necessary actions to protect them from discrimination and harassment.

**Sweden, CCPR/C/SWE/CO/6, 7 May 2009**

**Keywords:** anti-discrimination legislation, asylum

3. The Committee welcomes the various legislative, administrative and practical measures taken to improve the promotion and protection of human rights in the State party since the examination of the fifth periodic report, in particular:

(a) The inclusion of a new provision in the Constitution in 2003 (The Instrument of Government, chap. 1, art. 2, para. 4), clarifying that public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person;

...

(d) The entry into force of the new Aliens Act (2005:716) in 2006, which provides for the right to appeal to independent bodies, allows for increased use of oral hearings on appeal, and permits the granting of refugee status to women fleeing gender-based violence as well as persons fleeing from persecution on grounds of sexual orientation;

4. The Committee has noted the merger, in January 2009, of the four previously existing Ombudsmen against Discrimination into a single Equality Ombudsman with competence to receive and examine individual complaints concerning alleged cases of discrimination, including on the grounds of age and transgender identity or expression. The Committee is concerned, however, that the State party has still not established an independent national institution, with a broad competence in the area of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134; art. 2 of the Covenant).

The State party should establish a national institution with a broad human rights mandate, and provide it with adequate financial and human resources, in conformity with the Paris Principles.

8. The Committee notes the efforts made by the State party to eliminate violence against women, including through the adoption of a national action plan 2007-2010 to combat men's violence against women, family-based violence that misuses the idea of "honour", and violence in same-sex relationships, and amendment of the Social Services Act (2001:953) to provide support to women and children who are victims of violence. The Committee remains concerned, however, about the high prevalence of violence against women, particularly domestic violence. The Committee is also concerned that the State party has not provided consistent financial assistance to the shelters for victims of violence which are run by non-governmental organizations and that shelters are not available in all municipalities (arts. 3, 6, 7 and 26).

The State party should intensify its efforts towards the elimination of violence against women, inter alia through awareness-raising campaigns and effective implementation of the action plan 2007-2010 and the special package of measures to increase initiatives for the rehabilitation of men convicted of sexual violence and violent offences in close relationships. The State party should also ensure the availability of a fully adequate number of shelters for women and children subjected to domestic violence, including those with special needs, in particular women and children with disabilities.

#### **Japan, CCPR/C/JPN/CO/5, 18 December 2008**

**Keywords:** discrimination, partnership benefits

29. The Committee is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by article 23 (1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (art. 2 (1) and 26).

The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee's interpretation of article 26 of the Covenant.

#### **Denmark, CCPR/C/DNK/CO/5, 16 December 2008**

**Keywords:** anti-discrimination legislation

4. The Committee welcomes the extensive legislative, administrative and policy measures taken to improve the promotion and protection of human rights since the examination of the fourth periodic report, including:

...

(e) The establishment, in May 2008, of the Board of Equal Treatment, with competence to receive individual complaints concerning alleged cases of discrimination based on gender, race, colour, religion or belief, disability, political opinion, age or sexual orientation, national, social or ethnic origin.

**Czech Republic, CCPR/C/CZE/CO/2/Add.1, 9 September 2008**

**Keywords:** anti-discrimination legislation

17. The bill amends the law on equal treatment and protection from discrimination for reasons of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The prohibition of discrimination will be set forth by the Act in a number of nominated spheres, which are: the right to employment and access to employment, access to vocational or entrepreneurial activity or other self-employed gainful activity, in the sphere of employment and other dependent activity including remuneration, membership and activities of trade unions, employee councils or other organizations of employers, membership and activities in professional associations including the benefits provided by such organizations to its members, in social security and social benefits, health care, education and access to goods and services which are provided to the public, including accommodation, and their provision. The Act further defines the titles which the victims of discrimination may claim.

**France, CCPR/C/FRA/CO/4, 31 July 2008**

**Keywords:** anti-discrimination legislation

6. The Committee welcomes France's creation of the High Authority to Combat Discrimination and Promote Equality (la haute autorité de lutte contre les discriminations et pour l'égalité, HALDE), which has the power to receive individual complaints and act on its own initiative to remedy problems of discrimination based on national origin, disability, health, age, gender, family and marital status, trade union activity, sexual orientation, religious beliefs, physical appearance, surname, and genetic characteristics. HALDE is empowered, pursuant to Act No. 2004/1486 of 30 December 2004, to recommend statutory or regulatory changes to public authorities and to suggest settlements to private companies, and has described its activities in comprehensive annual reports.

**Republic of San Marino, CCPR/C/SMR/CO/2, 31 July 2008**

**Keywords:** anti-discrimination legislation

7. The Committee is concerned that such non-discrimination grounds as sexual orientation, race, colour, language, nationality and national or ethnic origin are subsumed under the notion of 'personal status' in article 4 of the Declaration of the Citizens' Rights. It observes that such subsuming of grounds makes it difficult to ensure their equal and comprehensive application (articles 2 and 26).

The State party should adopt a comprehensive anti-discrimination legal framework which expressly indicates all those grounds of discrimination that are presently subsumed under the notion of 'personal status'.

**Ireland, CCPR/C/IRL/CO/3, 30 July 2008**

**Keywords:** transgender/gender identity, identity documents, partnership benefits

8. The Committee, while noting with satisfaction the State party's intention to adopt legislation on a civil partnership bill, expresses its concern that no provisions regarding taxation and social welfare are proposed at present. It is furthermore concerned that the State party has not recognized a change of gender by transgender persons by permitting birth certificates to be issued for these persons. (arts. 2, 16, 17, 23, and 26)

The State party should ensure that its legislation is not discriminatory of nontraditional forms of partnership, including taxation and welfare benefits. The State party should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.

**United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/6, 30 July 2008**

**Keywords:** partnership benefits, identity documents, anti-discrimination legislation

5. The Committee welcomes the adoption of the Civil Partnership Act 2004, the Gender Recognition Act 2004, the Equality Act 2006 and the Sex Discrimination (amendment of Legislation) Regulations 2008.

**Botswana, CCPR/C/BWA/CO/1, 24 April 2008**

**Keywords:** decriminalization

22. The Committee notes with concern that the State party criminalizes same-sex sexual activities between consenting adults (arts 17 and 26).

The State party should repeal these provisions of its criminal law.

**St. Vincent and The Grenadines, CCPR/C/VCT/CO/2, 24 April 2008**

**Keywords:** decriminalization

8. The Committee is concerned that consensual homosexual acts between adults in private are still criminalized under section 146 of the Criminal Code (art. 17).

The State party should provide information on the application of the law in practice, and consider the abolition of this law.



**Algeria, CCPR/C/DZA/CO/3, 12 December 2007**

**Keywords:** decriminalization

The Committee notes with concern that some provisions of the Criminal Code, in particular article 338, prohibit private sexual activity between consenting adults of the same sex (Covenant, arts. 17 and 26).

The State party should revoke these provisions.

**Austria, CCPR/C/AUT/CO/4, 30 October 2007**

**Keywords:** anti-discrimination legislation, discrimination

8. The Committee notes that the Equal Treatment Act, the Employment of Disabled Persons Act and the Equality of Disabled Persons Act provide protection against discrimination on grounds of ethnic origin and disability at work and in other areas such as social security, housing, education and health. However, it notes with concern that protection against gender discrimination is less comprehensive and that protection against discrimination on grounds of age, religion and sexual orientation is limited to 'work' only under the Equal Treatment Act. It is also concerned that such hierarchisation of discrimination grounds can also be found in Provincial laws, and that in cases covered by the Acts concerning disabled persons, victims must seek an out-of-court settlement prior to filing a court action. (arts. 2 (1), 14 (1), 26)

The State party should consider amending the Equal Treatment Act, the Employment of Disabled Persons Act, the Equality of Disabled Persons Act and relevant Provincial laws, with a view to levelling up and ensuring equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination.

**Sudan, CCPR/C/SDN/CO/3, 29 August 2007**

**Keywords:** decriminalization, death

19. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including embezzlement by officials, robbery with violence and drug trafficking, as well as practices which should not be criminalised such as committing a third homosexual act and illicit sex, is incompatible with article 6 of the Covenant. (arts. 6 and 7 of the Covenant)

The State party should ensure that the death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. Any imposition of the death penalty should comply with the requirements of article 7. In its next report, the State party is asked to furnish information on the number of executions which have taken place and the type of offence for which the death penalty has been imposed.

**Zambia, CCPR/C/ZMB/CO/3, 9 August 2007**

**Keywords:** decriminalization

24. The Committee notes with concern that the Penal Code criminalizes same-sex sexual activities between consenting adults. (arts 17 and 26).

The State party should repeal such provision of the Penal Code.

**Barbados, CCPR/C/BRB/CO/3, 11 May 2007**

**Keywords:** decriminalization

13. The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26).

The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.

**Chile, CCPR/C/CHL/CO/5, 18 May 2007**

**Keywords:** discrimination, decriminalization

16. While it observes with satisfaction that the laws criminalizing homosexual relations between consenting adults have been repealed, the Committee remains concerned about the discrimination to which some people are subject because of their sexual orientation, for instance, before the courts and in access to health care (articles 2 and 26 of the Covenant).

The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law and in access to health care. It should also launch awareness-raising programmes to combat social prejudice.

**Barbados, CCPR/C/BRB/CO/3, 11 May 2007**

**Keywords:** decriminalization

13. The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26).

The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.

iii. GENERAL COMMENTS

None

## **B. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

<http://www2.ohchr.org/english/bodies/cescr/index.htm>

### **i. JURISPRUDENCE**

None

### **ii. CONCLUDING OBSERVATIONS**

#### **Poland, E/C.12/POL/CO/5, 19 January 2010**

**Keywords:** anti-discrimination legislation, discrimination

12. The Committee continues to be concerned at the de facto discrimination experienced by some disadvantaged and marginalized individuals and groups, such as ethnic minorities, persons with disabilities, and lesbian, gay, bisexual and transgender persons in the enjoyment of their economic, social and cultural rights, despite the appointment of the Plenipotentiary for Equal Treatment in April 2008. The Committee is further concerned that the draft act on implementation of some European Union directives in the field of equal treatment does not provide comprehensive protection against all forms of discrimination in all areas related to Covenant rights (art. 2.2).

The Committee strongly urges the State party to amend the provisions of the draft act on implementation of some European Union directives in the field of equal treatment, to bring it into conformity with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights. The Committee also recommends that the State party ensure effective enforcement of existing anti-discrimination legislation, and strengthen measures to combat de facto discrimination, including through campaigns aimed at combating stereotypes, especially concerning disadvantaged and marginalized individuals and groups. The Committee invites the State party to include in its next periodic report information on the results of the work undertaken by the Plenipotentiary for Equal Treatment.

32. The Committee is deeply concerned at reports about homophobia, particularly bullying in schools (art. 13).

The Committee recommends that the State party take measures, in particular awareness-raising, to counter homophobic attitude in educational settings, ensuring that individuals are not discriminated against on the basis of their sexual orientation and identity. The Committee also recommends that the State party introduce in schools the Compass manual on human rights education with young people, published by the Council of Europe.

**Republic of Korea, E/C.12/KOR/CO/3, 17 December 2009**

**Keywords:** anti-discrimination legislation

9. The Committee is concerned that a comprehensive anti-discrimination law has still not been adopted by the State party owing to the fact that the anti-discrimination bill submitted to the seventeenth National Assembly in December 2007 was discarded without consideration. The Committee is also concerned that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds, but rather stipulates a list of typical anti-discrimination grounds as an example, and that it only contains certain grounds for discrimination, excluding others that had been indicated in the original bill, such as nationality and sexual orientation (art. 2).

The Committee urges the State party to adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2).

**United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5, 12 June 2009**

**Keywords:** anti-discrimination legislation

6. Le Comité note avec satisfaction l'introduction d'un projet de loi sur l'égalité qui vise à simplifier la législation en vigueur et à étendre la protection contre la discrimination à d'autres motifs tels que l'âge et l'orientation sexuelle, ainsi que la création de plusieurs institutions traitant des questions relatives à l'égalité telles que la diversité judiciaire («Panel on Judicial Diversity») et l'accès équitable aux professions libérales («Panel on Fair Access to the Professions»).

**Brazil, E/C.12/CO/BRA/2, 12 June 2009**

**Keywords:** anti-discrimination legislation

3. The Committee welcomes the legislative and other measures adopted by the State party since the examination of its initial report, including the following:

...

(e) The Brazil Free of Homophobia Programme, which aims to protect and promote the rights of homosexual persons, including their rights to personal security, education, health and work;

**Sweden, E/C.12/SWE/CO/5, 1 December 2008**

**Keywords:** domestic violence

9. The Committee welcomes the steps taken to combat violence against women, in particular the adoption of an action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships'.

iii. GENERAL COMMENTS

**General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 2 July 2009**

**Keywords:** Yogyakarta Principles, discrimination

*II. SCOPE OF STATE OBLIGATIONS*

11. Private sphere. Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

*III. PROHIBITED GROUNDS OF DISCRIMINATION*

B. Other status

27. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of "other status" is thus needed to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds in Article 2(2). These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalisation. The Committee's General Comments and Concluding Observations have recognised various other grounds and these are described in more detail below. However, this list is not intended to be exhaustive. Other possible prohibited grounds could include the denial of a person's legal capacity because he or she is in prison, or is involuntarily interned in a psychiatric institution, or the *intersection* of two prohibited grounds of discrimination, e.g., where access to a social service is denied on the basis of sex and disability.

32. Sexual orientation and gender identity. "Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace. [fn]

fn: For definitions, see Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

**General Comment No. 19: The Right to Social Security, E/C.12/GC/19, 4 February 2008**

**Keywords:** discrimination

*II. NORMATIVE CONTENT OF THE RIGHT TO SOCIAL SECURITY*

B. Special topics of broad application

1. Non-discrimination and equality

29. The obligation of States parties to guarantee that the right to social security is enjoyed without discrimination (article 2, paragraph 2, of the Covenant), and equally between men and women (article 3), pervades all of the obligations under Part III of the Covenant. The Covenant thus prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.

## C. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

<http://www2.ohchr.org/english/bodies/cerd/index.htm>

### i. JURISPRUDENCE

None

### ii. CONCLUDING OBSERVATIONS

#### **Greece, CERD/C/GRC/CO/16-19, 14 September 2009**

**Keywords:** anti-discrimination legislation

3. The Committee welcomes the adoption of Law 3304/2005 on the “Implementation of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation” in 2005.

#### **Austria, CERD/C/AUT/CO/17, 22 September 2008**

13. The Committee welcomes the establishment in 2005 of the Ombudsperson for Equal Treatment irrespective of ethnic affiliation, religion or belief, age or sexual orientation in employment, and the Ombudsperson for Equal Treatment irrespective of ethnic affiliation in other areas. However, the Committee is concerned about the limited resources, as well as his/her limited competence to participate in court proceedings.

The Committee recommends that the State party take appropriate measures to provide the Ombudspersons with the human and financial resources required to adequately advise and support victims of discrimination, and to grant them competence to initiate and participate in court proceedings as a third party.

#### **Germany, CERD/C/DEU/CO/18, 22 September 2008**

**Keywords:** anti-discrimination legislation

4. The Committee welcomes the adoption of the General Equal Treatment Act in August 2006 (Allgemeines Gleichbehandlungsgesetz - AGG), which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.

#### **Georgia, CERD/C/GEO/CO/3/Add.1, 17 March 2008**

**Keywords:** anti-discrimination legislation

34. According to article 2, paragraph 3, of the Code, discrimination based on race, skin colour, language, ethnic or social belonging, nationality, origin, property and rank or status, place of residence, age, sex, sexual orientation, disabilities, religion, family status, membership in a political or professional union is absolutely prohibited in labour relations.

**Czech Republic, CERD/C/CZE/CO/7, 11 April 2007**

**Keywords:** partnership benefits

18. The Committee notes that several distinctions made under domestic law between the rights of citizens and non-citizens may not be fully justified. It notes in particular that European Union non-citizens, although they are entitled to vote and be elected at local elections, may not belong to a political party. The Committee also notes with concern that a condition under the Act on Registered Partnerships between Persons of the Same sex, currently under debate in Parliament, may be that at least one of the persons be a Czech citizen. (article 5)

The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens, and recalls that differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

iii. GENERAL COMMENTS

None



## **D. COMMITTEE AGAINST TORTURE**

<http://www2.ohchr.org/english/bodies/cat/index.htm>

### **i. JURISPRUDENCE**

None

### **ii. CONCLUDING OBSERVATIONS**

#### **Lithuania, CAT/C/LTU/CO/2, 19 January 2009**

**Keywords:** anti-discrimination legislation

4. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Law on Equal Treatment which came into force on 1 January 2005 with the purpose to ensure the implementation of human rights laid down in the Constitution and to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion, or beliefs;

#### **Costa Rica, CAT/C/CRI/CO/2, 7 July 2008**

**Keywords:** discrimination, police, prison officials

11. The Committee takes note of the efforts made by the State party to address cases of abuse of authority by border guards and prison staff, including specific recommendations that officials should avoid actions or omissions which violate rights. However, the Committee remains concerned at cases of abuse of immigrants and citizens, especially on the grounds of their sexual orientation and/or transsexual identity. The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16).

Through training and awareness creation among those concerned, the State party should foster a policy of respect for human rights for all without discrimination. The State party should take steps to ensure continuous monitoring and periodic evaluation of the impact of the training and awareness creation provided for police officers, border guards and prison personnel.

18. The Committee expresses concern at the reports of sexual abuse and physical violence against homosexual and transsexual prisoners.

**Sweden, CAT/C/SWE/CO/2, 4 June 2008**

**Keywords:** anti-discrimination legislation, asylum, domestic violence

5. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and ill-treatment, in particular:

- (a) The amendment of the Swedish Aliens Act in 2006, which introduces a new appeal system, includes an explicit provision on non-refoulement and provides for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation;
- (b) The adoption of new legislation on fundamental safeguards, including access to a lawyer and notification of custody that entered into force on 1 April 2008 (law no. 2008:67);
- (c) The adoption of a national human rights plan of action for the period 2006-2009;
- (d) The adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships (Govt. Comm. 2007/08:39); and
- (e) The common Action Plan developed by the Border Control Police, the Migration Board and the Social Services which aims to minimise the risks of unaccompanied asylum-seeking children disappearing and becoming victims of trafficking.

21. The Committee notes that the 2001 action plan against racism, xenophobia, homophobia and discrimination has been incorporated in the new human rights action plan for the period 2006-2009 and it welcomes the recent initiative of the Government to merge the current antidiscrimination legislation into one single Anti-Discrimination Act that will cover seven grounds of discrimination.[fn]

fn: Discrimination on the grounds of sex, sexual orientation, gender identity, ethnic background, religion or other religious beliefs, disability, and age.

**Portugal, CAT/C/PRT/CO/4, 19 February 2008**

**Keywords:** hate crimes, police

17. The Committee notes that article 240 of the new Penal Code, concerning non-discrimination, now covers not only discrimination based on race, colour, ethnic or national origin and religion, but also discrimination based on sex and sexual orientation. It is nonetheless concerned by reports of numerous acts of violence of a discriminatory nature directed against certain minorities. The Committee is also concerned that the membership of the police forces does not reflect the diversity of minorities present in Portugal (art. 16).

The State party should take the necessary measures to effectively combat acts of violence based on any form of discrimination and to punish the perpetrators appropriately. The State party should also strive to include representatives of minorities residing in its territory in the police forces.

**Latvia, CAT/C/LVA/CO/2, 19 February 2008**

**Keywords:** anti-discrimination legislation, hate crimes

19. While noting a number of measures adopted by the State party, including the recent amendment to article 48 of the Criminal Law to include racial motivation as an aggravating factor for criminal liability, the Committee expresses its concern at report of acts of violence against and discrimination of vulnerable groups, including Roma and the lesbian, gay, bisexual and transgender (LGBT) community. The Committee is concerned at reports that the number of allegedly racially motivated crimes has recently increased and that the number of reported hate crimes is underestimated due to the lack of an effective hate crime recording and monitoring system. Furthermore, while the Committee takes note of the efforts made by the State party in recent years in the process of naturalization, it remains concerned at the continued existence of the status of non-citizens and stateless persons, affecting a large group in Latvian society (art. 16).

The State party should intensify its efforts to combat discrimination against and illtreatment of vulnerable groups, in particular Roma and the LGBT community, including through the strict application of relevant legislation and regulations providing for sanctions. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts, and ensure adequate training and instructions for law enforcement bodies and sensitization of the judiciary. The State party is encouraged to adopt the draft national programme to facilitate tolerance and to provide detailed information in its next periodic report on the effective measures adopted to prevent and combat such acts. The State party should simplify and facilitate the naturalization process and integration of non-citizens and stateless persons.

**Poland, CAT/C/POL/CO/4, 25 July 2007**

**Keywords:** anti-discrimination legislation, hate crimes, hate speech

20. The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians. (art. 16)

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

**Italy, CAT/C/ITA/CO/4, 16 July 2007**

**Keywords:** anti-discrimination legislation

23. While noting various measures taken by the State party, including the survey issued on 21 February 2007 by the National Institute of Statistics (ISTAT) on the issue of physical and sexual violence against women, and the establishment on 8 March 2006 of an ad hoc toll-free number 1522, called “Anti-violence against Women (Anti-violenza Donna)”, the Committee remains concerned about the persistence of violence against women and children, including domestic violence. The Committee further regrets that the State party did not provide statistical data on complaints, prosecutions and sentences in matters of domestic violence. (arts. 1, 2, 12 and 16)

The State party should increase its efforts to prevent, combat and punish violence against women and children, including the adoption of the Bill on “Awareness raising and prevention measures as well as the repression of crimes against the individual or within the household, on account of sexual orientation, gender identity and any other reason of discrimination” (Chamber Act No. 2169) which envisages, inter alia, the systematic collection and analysis of data on violence, including domestic violence.

iii. GENERAL COMMENTS

**General Comment No. 2: Implementation of article 2 by States Parties, CAT/C/GC/2, 24 January 2008**

**Keywords:** discrimination, multiple discrimination, transgender/gender identity

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

22. State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports.

## **E. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

<http://www2.ohchr.org/english/bodies/cedaw/index.htm>

### **i. JURISPRUDENCE**

None

### **ii. CONCLUDING OBSERVATIONS**

#### **Netherlands, CEDAW/C/NLD/CO/5, 5 February 2010**

**Keywords:** discrimination, transgender/gender identity

6. The Committee welcomes the initiatives and measures developed by the Netherlands to prevent and combat female genital mutilation and honour-related killings, as well as the commitment to protect women against discrimination on the grounds of sexual orientation, as indicated in the introductory statement of the delegation of the State party.

25. The Committee calls upon the State party to strengthen its efforts to eliminate stereotypical images and attitudes regarding the roles of women and men in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. This should include developing additional programmes to address gender stereotypes related to discrimination on other grounds, such as race, age, sexual orientation and disability, and to scrutinize government policies, in particular migration and integration policies, as well as targeted programmes in the education system and the gender equality training of teachers. It calls upon all the governments to periodically review the measures taken in order to assess their impact and effectiveness, to take any necessary follow-up or remedial action, and to report thereon to the Committee in its next report.

46. While noting that the national report for 2009-2010 on the implementation of the Convention will be devoted to the health of ethnic minority women in relation to their socio-economic position, the Committee expresses serious concern that the maternal mortality risk for female asylum-seekers is four times higher than for native Dutch women in the Netherlands and that undocumented female immigrants face great difficulties in accessing the health services to which they are formally entitled, mainly because of a lack of appropriate information provided to them. The Committee also expresses concern at specific health problems experienced by transgender women, in particular the compulsory sterilization they should undergo to get their birth certificates changed and the non-reimbursement by health insurance for surgical placement of their breast implants. The Committee is further concerned that pregnant women suspected of drug trafficking at Schiphol national airport who cannot undergo a body scan may be detained for lengthy periods of time.

47. The Committee urges the Netherlands to include in its next report the outcome of the study into the health condition of ethnic minority women related to the obligation under the Convention and general recommendation No. 24. In the meantime, the Committee urges the Netherlands to take immediate measures to reduce the maternal mortality of female asylum-seekers and to provide information to undocumented women on their rights as well as practical information on how they can access health-care services. The Committee strongly supports the intention of the Netherlands to conduct in-depth research on the health situation of transgender women and to revise the law making sterilization compulsory for transgender

women. The Committee also invites the Netherlands to reconsider its position to not reimburse transgender women for breast implants. The Committee urges the Netherlands to use appropriate methods of examination on pregnant women suspected of drug trafficking in order to avoid their detention at the national airport.

**Uzbekistan, CEDAW/C/UZB/CO/4, 5 February 2010**

**Keywords:** multiple discrimination

40. The Committee notes the very limited information and statistics available on vulnerable groups of women, including elderly women, women with disabilities and women discriminated against on the basis of their sexuality. The Committee is concerned that those women often suffer from multiple forms of discrimination, especially with regard to access to education, employment and health care, protection from violence and access to justice.

**Ukraine, CEDAW/C/UKR/CO/7, 5 February 2010**

**Keywords:** multiple discrimination

42. The Committee regrets the lack of detailed information in relation to vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and notes with concern that these groups of women may be subjected to multiple forms of discrimination.

43. The State party is invited to provide comprehensive information and statistical data in its next periodic report on the situation of the vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and on the measures taken for eliminating discrimination against these women with regard to their access to health, education, employment, social benefits, etc.

**Panama, CEDAW/C/PAN/CO/7, 5 February 2010**

**Keywords:** multiple discrimination, physical violence

22. The Committee reiterates its concern about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and in the society at large, which represent a significant impediment to the implementation of the Convention and constitute serious obstacles to women's enjoyment of their human rights. Furthermore, the Committee is gravely concerned that certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination as well as violence on grounds such as sexual orientation and gender identity, as recognized by the delegation. In this regard, the Committee notes that the communication media in the State party reinforces images of women as sex objects and also contributes to different ethnic prejudices.

**Germany, CEDAW/DEU/CO/6, 12 February 2009**

**Keywords:** anti-discrimination legislation

5. The Committee commends the State party for the adoption of the General Equal Treatment Act of 18 August 2006 aimed at preventing and eliminating discrimination, as well as of harassment and sexual harassment.[fn]

fn: The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. See section 1 of this Act, online resources of the Federal Anti-Discrimination Agency, [www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de).

61. The Committee notes with satisfaction the cooperation of the State party with civil society organizations, particularly women's organizations, which is mostly achieved through Government cooperation with such organizations on specific programmes and projects. The Committee regrets, however, that the call for dialogue by non-governmental organizations of intersexual and transsexual people has not been favourably entertained by the State party.

62. The Committee requests the State party to enter into dialogue with non-governmental organizations of intersexual and transsexual people in order to better understand their claims and to take effective action to protect their human rights.

**Guatemala, CEDAW/GUA/CO/7, 10 February 2009**

**Keywords:** discrimination

19. Notwithstanding various measures taken by the State party to eliminate gender stereotypes, the Committee is concerned at the pervasiveness of patriarchal attitudes and deep rooted stereotypes regarding the roles and responsibilities of women and men in the family, in the workplace, in political life and society, which constitute serious obstacles to women's enjoyment of their human rights. The Committee is also concerned that certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination on grounds such as their ethnicity or their sexuality.

20. The Committee urges the State party to increase its efforts to design and implement comprehensive awareness-raising programmes to foster a better understanding of, and support for, equality between women and men at all levels of society. Such efforts should aim at modifying stereotypical attitudes and cultural norms about the responsibilities and roles of women and men in the family, the workplace, political life and society, as required under articles 2 (f) and 5 (a) of the Convention. The Committee also urges the State party to adopt an overall strategy to eliminate gender stereotypes relating to women in general, and in particular discrimination against women based on their ethnicity or sexuality. This strategy could include awareness-raising programmes in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys.

**Kyrgyzstan, CEDAW/KGZ/CO/3, 14 November 2008**

**Keywords:** police

43. The Committee is concerned about reports of discrimination and harassment against women because of their sexuality as well as about acts of harassment against women in prostitution by police officials.

**Ecuador, CEDAW/ECU/CO/7, 7 November 2008**

**Keywords:** anti-discrimination legislation

28. While noting the prohibition of discrimination against sexual minorities referred to in Article 11, paragraph 2 of the new Constitution, the Committee is concerned with reports of discrimination against women on this ground.

29. The Committee recommends that the State party ensure investigation of such cases and undertake remedial action in line with its Constitution.

**Sweden, CEDAW/C/SWE/CO/7, 8 April 2008**

**Keywords:** domestic violence, asylum

9. The Committee commends the State party for the adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships.

10. The Committee welcomes the amendment of the Swedish Aliens Act in 2006, which provides for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation and which will be of benefit to women refugees.

iii. GENERAL COMMENTS

None



## **F. COMMITTEE ON THE RIGHTS OF THE CHILD**

<http://www2.ohchr.org/english/bodies/crc/index.htm>

### **i. JURISPRUDENCE**

None

### **ii. CONCLUDING OBSERVATIONS**

#### **United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 20 October 2008**

**Keywords:** anti-discrimination legislation, discrimination

24. The Committee welcomes the State party's plans to consolidate and strengthen equality legislation, with clear opportunities to mainstream children's right to nondiscrimination into the United Kingdom anti-discrimination law (the forthcoming Equality Bill). The Committee also welcomes the adoption of action plans and the monitoring and information collection work carried out on the issue of discrimination. However, the Committee is concerned that in practice certain groups of children, such as: Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay, and transgender children (LBGT) and children belonging to minority groups continue to experience discrimination and social stigmatization. The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.

25. The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by:

- (a) Taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media;
- (b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LBGT); and of children belonging to minority groups;
- (c) Taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.

**Slovakia, CRC/C/SVK/CO/2, 10 July 2007**

**Keywords:** anti-discrimination legislation, discrimination

27. The Committee welcomes the reform of legislation, the adoption of action plans and the monitoring and information collection work carried out on the issue of discrimination. Nevertheless, the Committee expresses its concern that Act No. 136/2003 Coll. and Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, and on amendments to certain acts (“the Anti-Discrimination Law”) do not provide protection from discrimination in the areas of social security, healthcare, education and provision of goods and services on the grounds of ethnicity, disability, religion or belief, and sexual orientation. The Committee also notes that the action plans are the only comprehensive and systematic tools of the State party’s Government in the area of preventing discrimination and intolerance. The Committee remains concerned that in practice certain groups continue to experience discrimination. The Committee is also concerned that, parents do not want their children to have any contact with Roma children from residential homes and that in some cases, citizens have rejected by referendum the existence of a children’s home in the municipality and have caused the home to be relocated.

28. The Committee urges the State party to ensure full protection under the Anti-Discrimination Law against discrimination on the grounds of, ethnicity, disability, religion or belief, or sexual orientation. The Committee also urges the State party to strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, to take affirmative actions for the benefit of certain vulnerable groups of children, especially the Roma. The State party should ensure that its action plans to prevent discrimination and intolerance are comprehensive, addressing all forms of discrimination against individuals or groups. The Committee further urges the State party to take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively.

29. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Committee’s general comment No.1 (2001) on the aims of education.

**Malaysia, CRC/C/MYS/CO/1, 25 June 2007**

**Keywords:** discrimination

31. While noting with appreciation the principle of non-discrimination in article 8 of the Federal Constitution, as well as in the preamble of the Child Act 2001 (Act 611) and the special measures taken to advance and protect the status and existence of indigenous peoples, the Committee is concerned that many children belonging to vulnerable groups are likely to experience de facto discrimination in everyday life. These include the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers. Acknowledging the State party’s challenges in providing quality services in remote areas of the country, the Committee is concerned that many children are still suffering from disparities in the field of access to social and health services and education. Concern is expressed at the insufficient efforts made to address discrimination based on sexual orientation.

32. In the light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers.

**Chile, CRC/C/CHL/CO/3, 23 April 2007**

**Keywords:** decriminalization, anti-discrimination legislation

29. The Committee recognises the policy measures undertaken to advance the implementation of the principle of non-discrimination, in particular in the area of health services, however remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities, as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education. The Committee further notes the prevalence of gender based discrimination and that pregnancy continues to result in the exclusion of girls from educational establishments, despite an explicit prohibition of discrimination on this ground. Furthermore, the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized, indicating discrimination on the basis of sexual orientation.

30. The Committee recommends that the State party increase its efforts to review, monitor and ensure implementation of legislation guaranteeing the principle of nondiscrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any other grounds and against all vulnerable groups throughout the country.

31. The Committee also requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party, to provide special protection to vulnerable groups and to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account General Comment No. 1 on article 29, paragraph 1 of the Convention (aims of education).

iii. GENERAL COMMENTS

None

## **II. SPECIAL PROCEDURES: WORKING GROUPS, SPECIAL RAPORTEURS, AND INDEPENDENT EXPERTS**

### **A. WORKING GROUP ON ARBITRARY DETENTION**

<http://www2.ohchr.org/english/issues/detention/index.htm>

#### **Report of the Working Group on Arbitrary Detention, Colombia, A/HRC/10/21/Add.3, 16 February 2009**

**Keywords:** detention, police

The Working Group notes the gap between the Constitution - an instrument recognized worldwide for its democratic nature, in both its genesis and content - the law, and reality. It criticizes the practice of administrative pretrial detention by the National Police; mass or multiple arrests by the military in rural areas; detentions in the poor areas of the big cities, especially of beggars, the destitute and members of ethnic and sexual minorities; military round-ups and enlist conscription. The Working Group expresses its concern at the problem of “false positives” whereby the bodies of young persons who have disappeared in the big cities crop up a short time later hundreds of kilometres away, identified as guerrillas killed in combat. It criticizes the absence of criminal enforcement judges in prisons, prison overcrowding, especially in the La Picota, Villa Hermosa and Palmira prisons, and the practice of citizen’s arrests.

56. The National Police is continuing its practice of carrying out round-ups or raids in big cities, justifying the practice as a preventive measure. Communities of sexual minorities complained of being detained frequently because of their appearance or clothes. Beggars, the destitute, vagrants, people who look suspicious, and even street vendors, whose goods are confiscated, are also detained.

#### **Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/4/40/Add.1, 2 February 2007**

##### **OPINION No. 22/2006 (CAMEROON)**

**Keywords:** decriminalization, police, detention

7. The source states that the above-mentioned 11 persons were arrested with six other persons (17 in all) in a bar known to be frequented by homosexuals. The arrests were widely covered in the press and by local television channels, which showed pictures of them. The source adds that some of the arrestees have been released, but that the above-mentioned 11 of them are still in detention.

8. These 11 persons have been charged under article 347 (bis) of Order No. 72-16 of the Cameroonian Criminal Code of 28 September 1972, which provides for a penalty of 6 months’ to 5 years’ imprisonment and a fine of 20,000 to 200,000 CFA francs for anyone guilty of having sexual relations with a person of the same sex. In September 2005, their lawyer obtained the transfer to the juvenile offenders’ section of the only minor in the group; he (aged 17) had previously been held with the other adult detainees. In October 2005 the lawyer applied for the pretrial release of all 11 accused, but the application was denied.

14. In its response, the Government stated that the 11 persons had been placed in preventive detention for the purposes of proceedings against them by the Court of First Instance of Yaoundé-Centre Administratif. The detention had been founded on a gendarmerie investigation that had brought to light substantial evidence against them. Homosexuality is an offence under article 347 bis of the Cameroonian Criminal Code.

15. On 21 April 2006, all the accused were brought before the competent court, which found, in the light of the relevant legislation, that the case had been improperly referred to it. In the Government's view, the basis for the court's finding was Law No. 90/45 of 19 December 1990, which provides that persons accused of certain offences, including the offence to which article 347 bis of the Criminal Code relates, must be brought directly before the competent court. In consequence of the finding, all the accused were returned to custody under a committal order on 24 April 2006 and, on 8 May 2006, brought before the court, which then proceeded on the basis of the prosecution service's record of questioning on arrest *flagrante delicto*.

16. The Government asserts that the criminalization of homosexuality is contrary neither to article 12 of the Universal Declaration of Human Rights nor to article 26 of the International Covenant on Civil and Political Rights, since the persons in question are not denied a right or service on the ground of their presumed sexual orientation. What is involved is prosecution for practices contrary to law and to the moral standards of Cameroonian society.

17. The Government also states that, even should criminalization not be consistent with article 26 of the International Covenant, justification for it can be found in article 29, paragraph 2, of the Universal Declaration of Human Rights, which provides that a State may limit a right or freedom "for the purposes of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

18. In its comments on the Government's response, the source invokes the leading opinions expressed by the Working Group in earlier cases, in particular the determination that the references to "sex" in the first paragraph of article 2 of the Universal Declaration of Human Rights and in article 2, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights can be considered as including "sexual orientation". It also refers to the views of the Human Rights Committee, particularly those concerning the case of *Nicholas Toonen v. Australia* (CCPR/C/50/D/488/1992), in which the Committee held that the criminalization of homosexual practices was incompatible with article 17 of the International Covenant. The source adds that the Government's contention that issues of morality are solely within the jurisdiction of States themselves is unacceptable: to agree to it would be to open the door to the removal from international control of a potentially considerable number of domestic laws that could give rise to interference in people's private lives. The sources reassert that the deprivation of liberty of the above-mentioned 11 persons was, for all those reasons, arbitrary.

19. Ever since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 (Egypt), the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality in Cameroonian law is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights, which instrument Cameroon has ratified.

20. The Working Group concludes that the deprivation of liberty of the above-mentioned 11 persons was arbitrary, and that regardless of the fact that they were ultimately released.

21. In accordance with paragraph 17 (a) of its methods of work, the Working Group considers that the case in question warrants the rendering of an Opinion even though the persons concerned were released. The reasons for this position are the Group's wish to restate its jurisprudence on a matter of importance and the fact that one of the accused in the case died, apparently as a result of the conditions of his arbitrary detention.

22. In the light of the foregoing, the Working Group renders the following Opinion: The deprivation of liberty of Messrs. François Ayissi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima and Raymond Mbassi was arbitrary, as contravening the provisions of articles 17 and 26 of the International Covenant on Civil and Political Rights and falling under category II of the categories applicable to the consideration of cases submitted to the Working Group.

23. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to remedy the situation by considering the possibility of amending domestic law to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards accepted by the State.

**B. WORKING GROUP ON THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION**

<http://www2.ohchr.org/english/issues/mercenaries/index.htm>

**Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Peru, A/HRC/7/7/Add.2, 4 February 2008**

**Keywords:** transgender/gender identity, hate crimes

42. Reports were received of the death of a Spaniard, killed and robbed by a watchman. Moreover, of the 69 attacks on transvestites, transgenders or transsexuals investigated by Runa in 2006, 52 were committed by watchmen.[fn] Because local taxes vary from municipality to municipality, the rich ones have better protection, which is against the universal principle of non-discrimination in the right to security. In addition, the lack of any overall civic security policy means that each of Peru's 1,600 districts has a different strategy. The State is thus abdicating its duty to protect its citizens.

fn: Runa Institute for Development and Gender Studies, Lima

## C. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

<http://www2.ohchr.org/english/issues/defenders/index.htm>

### **Joint Statement from the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 1 March 2010**

Uganda: last chance to shelve Anti-Homosexuality Bill should not be missed, warn UN human rights experts

GENEVA (1 March 2010) – With its third and final reading imminent before the Ugandan Parliament, two UN Special Rapporteurs voiced their deep concerns about the Anti-Homosexuality Bill, which, if adopted, would have an extremely damaging impact on the important and legitimate work of human rights defenders in the country, and would curtail fundamental freedoms.

“The Bill would not only violate the fundamental rights of lesbian, gay, bisexual and transgender Ugandan people,” stressed Margaret Sekaggya and Frank La Rue, “but would also criminalize the legitimate activities of men and women, as well as national and international organizations, who strive for the respect for equality and non-discrimination on the basis of sexual orientation.”

According to the Bill, in addition to a fine, the offender would face imprisonment of at least five years, and in the case of a non-governmental organization, the cancelling of its certificate of registration and criminal liability for its director.

“The Bill would further unjustifiably obstruct the exercise of the right to freedoms of opinion and expression, peaceful assembly, and association, by prohibiting the publication and dissemination of materials on homosexuality, as well as funding and sponsoring related activities,” the Special Rapporteurs said.

The experts welcomed “the recent attempts made by President Museveni and other members of the Government to prevent the Bill from becoming law, and call on them to redouble their efforts at this crucial time.”

“We urge Parliamentarians to refrain from adopting this draconian Bill,” said the independent experts echoing previous statements made by the UN human rights chief, Navi Pillay, and the UN Special Rapporteur on health, Anand Grover.

“Adopting the Bill would be in clear breach of international human rights norms and standards contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on Human Rights Defenders and the African Charter on Human and Peoples’ Rights,” warned Ms. Sekaggya and Mr. La Rue.

“The passage of the Anti-Homosexuality Bill,” they noted, “would also gravely tarnish the image of Uganda on the regional and international scenes.”



**Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/13/22, 30 December 2009**

**Keywords:** threats

*III. The security and protection of human rights defenders*

A. Security of human rights defenders

(e) Security challenges faced by women defenders and defenders of sexual minorities

49. The Special Rapporteur is deeply concerned about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights. The right to peaceful assembly is also often denied to defenders working on lesbian, gay, bisexual and transgender issues or, alternatively, the police does not provide adequate protection for such demonstrations. Complaints related to violence and attacks are often not taken seriously by the police and are not always investigated properly.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders A/HRC/10/12, 12 February 2009**

*I. ACTIVITIES DURING THE REPORTING PERIOD*

C. Cooperation with the United Nations system and intergovernmental organizations

21. On 24 October 2008, the Special Rapporteur presented her first report (A/63/288) to the General Assembly, in which she presented her vision and defined her priorities for the mandate. In her report, the Special Rapporteur outlined her methods of work, which build on those developed by the Special Representative, including communications and country visits. The priorities outlined by the Special Rapporteur are: the analysis of trends and challenges, and the reinforcement of scrutiny of defenders exposed to specific violations and attacks, including women defenders; defenders working on economic, social and cultural rights; defenders working on the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people; defenders working on past abuses; and defenders engaged in student protests. The Special Rapporteur expressed her intention to continue the analysis of the challenges and obstacles that defenders face in the enjoyment of their rights to the core freedoms of association and peaceful assembly. She is also particularly interested in studying the facts that are necessary to devise an early-warning mechanism for the protection of defenders with a view to anticipating systematic threats against them by activating appropriate sectors of the national protection system. The Special Rapporteur also intends to intensify efforts on follow-up, collaborate with various stakeholders, popularize the Declaration on human rights defenders, and share good practices. Her report to the General Assembly included as an annex “Key messages on human rights defenders ten years after the adoption of the Declaration on human rights defenders, ten messages to raise awareness about defenders”.

*II. UNIVERSAL PERIODIC REVIEW: ENHANCING THE PROTECTION OF HUMAN RIGHTS DEFENDERS*

B. Assessment after three rounds

2. Compilation of United Nations information

65. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Serbia and Zambia; indigenous groups particularly in South American States such as Ecuador and Peru, and Asian States such as India and the Philippines; rural groups in

Serbia; lesbian, gay, bisexual, transgender and intersex groups in Eastern European States such as Poland and Serbia, and South American States such as Argentina and Ecuador; witnesses in Peru; and persons belonging to minorities in Israel.

### 3. Summary of stakeholder information: overview and analysis

72. Restrictions on the exercise of rights to freedom of human rights defenders included freedom of expression with regard to Bahrain, Morocco, Tunisia and the United Arab Emirates. Problems and restrictions relating to freedoms of peaceful assembly and association were mentioned in connection with Ecuador (criminalization of social protest), Morocco, Poland (assembly, campaigns for equality and relating to sexual orientation), Turkmenistan and the United Arab Emirates. Restrictions on the exercise of rights to freedom of movement of human rights defenders, in particular travel restrictions and the denial of exit and entry visas were highlighted in connection with Israel, Morocco, Tunisia and Uzbekistan.

74. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Israel and Serbia; indigenous groups in Ecuador; defenders working on issues related to persons belonging to minorities in the Czech Republic (Roma), India (Dalits) and Turkmenistan; defenders working on lesbian, gay, bisexual and transgender issues in Israel, Montenegro, the Republic of Korea, Serbia and Sri Lanka. Problems faced by defenders working on issues related to migrants were mentioned with regard to South Africa.

82. As for groups of defenders, the situation of women human rights defenders was mentioned in Zambia; the situation of and problems faced by activists working on lesbian, gay, bisexual and transgender rights in Poland and Romania, and on marginalized groups in the Czech Republic was also mentioned.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Guatemala, A/HRC/10/12/Add.3, 16 February 2009**

**Keywords:** freedom of association, police

### *II. HUMAN RIGHTS DEFENDERS*

#### B. Communications sent to Guatemala between the two visits

20. The increased number and intensity of attacks against human rights defenders in Guatemala were among the factors that prompted the follow-up visit of the Special Representative. In the time between her two visits, the Special Representative addressed to the Government 87 communications of allegations of human rights violations affecting defenders. While reiterating the caveat that the picture resulting from the communications sent by the Special Representative does not reflect human rights violations against defenders in the magnitude they occur worldwide but only those reported to her, Guatemala emerged among the countries of greatest concern among those on which the Special Representative received information. The 87 communications of the Special Representative reported allegations of human rights violations affecting over 170 defenders, a third of whom were women, and some 100 organizations, including trade unions; women's organizations; farmers' organizations and those working on land rights; environmentalist organizations; youth associations, students' networks and children's rights organizations; media associations; organizations working on justice and the right to truth, including associations of the families of victims of past abuses; indigenous organizations; associations to protect the rights of displaced persons; organizations working on economic, social and cultural rights;

organizations providing legal aid and assistance; organizations working on the rights of lesbian, gay, bisexual and transgender people; religious organizations engaged in humanitarian, social and human rights work; organizations working on migrants' rights; international NGOs; and staff of the Office of the Ombudsperson.

### C. Overview of attacks and violations against human rights defenders

#### 6. Youth defenders

48. A youth organization working on the rights of lesbians, gays, bisexual and transgender people is exposed to attacks linked to the stigmatization around sexual orientation and gender identity and reported, inter alia, constant harassment from the police.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/10/12/Add.1, 4 March 2009**

### **Armenia**

#### **Letter of allegations/Communications sent**

**Keywords:** discrimination, physical violence

115. On 29 May 2008, the Special Rapporteur sent a letter of allegation to the government concerning Mr Mikael Danielian, chairman of the Helsinki Association – Armenia, a human rights organization based in Yerevan.

116. According to the information received, on the afternoon of 21 May 2008, Mr Mikael Danielian was a passenger in a taxi in Terian St. in Yerevan when he was approached by a man, who had got out of a nearby vehicle. The suspect's name is known to the Special Rapporteur. The man allegedly punched Mr Danielian through the open car window at which point Mr Danielian got out of the taxi. The man reportedly continued to harass him, calling him a CIA agent who defended the interests of gay people and a 'shame to Armenia'.

117. Reports indicated that the man then shot Mr Danielian with a pneumatic weapon. The latter was not seriously injured but sustained some injuries to his chest and neck and was treated for a sharp rise in blood pressure by an ambulance at the scene. Mr Danielian was taken to the police department of Kentron district police station, where an investigator ordered that he undergo a medical forensic examination on May 22. Witnesses reported that the man who shot Mr Danielian was also taken to a police station, although it was not known if any charges have been brought against him.

118. Concern was expressed that the shooting of Mr Danielian may be directly related to his work in defense of human rights, particularly in the aftermath of recent political turmoil in Armenia. Following these reports, serious concern was expressed for Mr Danielian's physical and psychological integrity. The mandate-holder also requested that the Government refer to her predecessor's urgent appeal of 3 April 2008 to which she looked forward to a response.

#### **Observations**

119. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communications of 3 April 2008 and 29 May 2008. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and urges the Government to respond to the concerns raised by her.

120. The Special Rapporteur reminds the Government of the relevant provisions of the Declaration on human rights defenders, especially article 5 paragraph (a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

121. The Special Rapporteur reiterates her concern regarding Mr Danielian's physical and psychological integrity, and urges the government to transmit to her all relevant information regarding any investigation or prosecution into the case.

## **Bosnia and Herzegovina**

### **Letter of allegations/Communications sent**

**Keywords:** hate speech, hate crimes, freedom of assembly, freedom of association

275. On 27 November 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of allegations concerning participants of the "Sarajevo Queer Festival", a festival of art and culture, organized to promote awareness of the human rights of lesbian, gay, bisexual and transgender (LGBT) persons. According to the information received, permission for the first "Sarajevo Queer Festival" was granted to the organizing NGO called 'Udruzenje Q' for 24-28 September 2008 in Sarajevo. This festival of art and culture included a series of exhibitions, performances, film showings and public discussions to promote the universality of human rights and an end to discrimination based on sexual orientation or gender identity. In the month preceding the festival, several newspapers, including 'SAFF' and 'Dnevni Avaz' used derogatory language in reaction to gay and lesbian people and called for the participants of the festival to be lynched, stoned, doused with petrol or expelled from the country.

276. Death threats were issued on the internet against several individual gay rights activists, including members of the NGO 'Udruzenje Q'; media, venues and organizers received threats on a daily basis, and appeals were made to the public to disrupt the festival. Organization Q's forum at queer.ba website was hacked into twice. Tram stops in Sarajevo were covered with posters quoting the Qur'an and inciting hatred against homosexuals. Participants of the opening ceremony were physically attacked at the end of the first day of the festival. Eight persons were injured, including QSF international guests, several journalists and at least one policeman, when dozens of young people described as 'Wahhabis', 'football fans' and 'skinheads' attacked participants of the festival. Six persons sought medical assistance, but media and eyewitness claim many more attacks went unreported.

277. Although the festival was granted permission to be held until 28 September 2008, as the security situation deteriorated, the organizers decided to close the event to the public. When the death threats continued, they decided to terminate the festival. The decision was based on their assessment of the situation due to the lack of protection by the police. Death threats against the organizers continue.

278. Grave concern was expressed that the hate campaigns in the lead up to the event directly contributed to the climate of fear, hatred and intolerance which culminated in physical attacks and the harassment of the participants. It was recommended that the use of homophobic language by the media must be strongly condemned. Concern was expressed that these activities appeared to constitute a deliberate attempt to prevent participants and defenders

from carrying out their peaceful activities in raising awareness of the universality of human rights. Further concerns were expressed by the absence of appropriate policing which contributed to the disruption of the event and failure to provide adequate protection to participants of the festival.

### **Observations**

279. The Special Rapporteur thanks the Government of Bosnia and Herzegovina of the substantive response provided to the urgent appeal of 30 July 2008. The Special Rapporteur appreciates that the events are investigated by the Public Security Center in Bijeljina under supervision of the District Prosecutor's Office, and would welcome further details about the outcome of those investigations. The Special Rapporteur welcomes the decision of the Government also to provide increased security measures around the home of Mr Branko Todorovic and the premises of the Helsinki Committee in Bijeljina.

280. At the same time, the Special Rapporteur regrets that no response had been transmitted yet to the communication of 27 November 2008, regarding participants of the Sarajevo Queer Festival. In this connection, the Special Rapporteur wishes to remind the Government of the provisions of the Declaration on human rights defenders, in particular article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocates their acceptance", as well as article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, (...) against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration".

## **Bulgaria**

### **Urgent appeal**

**Keywords :** freedom of assembly, freedom of expression, hate speech

342. On 27 June 2008, the Special Rapporteur sent an urgent appeal concerning the Gay Pride Parade organized by the Bulgarian Gay Organization "Gemini" and scheduled to take place in Sofia on 28 June 2008. According to information received, reports indicated that several websites have published content which incite hostility and violence towards participants in the Gay Pride march. The website of the Ataka political party has called for an 'intervention' by all those opposed to the march and has associated the Parade with paedophilia. Furthermore, on 19 June the Bulgarian National Union (BNU) released a message on its official website reportedly entitled "BNU against homosexuality and paedophilia" (<http://bg.bgns.net/Aktualno/Anti-gei-kampaniya.html>) announcing a campaign called 'Don't be tolerant, be normal – A week of intolerance against homosexuality and paedophilia' from 22 June onwards. In the course of the week, the BNU is reportedly organizing round tables advocating the restriction of public displays of homosexuality and reportedly calling for direct opposition to the march of 28 June.

343. Deep concern was expressed that these statements may lead to threats intimidation and violence towards participants in the Gay Pride March in Sofia, who are exercising their legitimate and peaceful right to freedom of expression and freedom of assembly. In this context, I also express my serious concern for the physical and psychological integrity of the participants in the aforementioned march and for speech which may incite hatred.

## Observations

344. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communication of 27 July 2008. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and urges the Government to respond to the concerns raised by her.

## Burundi

### Letter of allegations/Communications sent

**Keywords:** decriminalization, discrimination

345. Le 4 décembre 2008, la Rapporteuse spéciale, conjointement avec l'Expert indépendant sur la situation des droits de l'homme au Burundi, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, a envoyé une lettre d'allégations sur le cas suivant.

346. L'Assemblée Nationale du Burundi aurait adopté le 22 novembre 2008 le projet de Code pénal révisé. Ce projet prévoit dans une nouvelle disposition la criminalisation de l'homosexualité et condamne ainsi tout acte sexuel entre des personnes du même sexe consentantes jusqu'à une peine de 2 ans d'emprisonnement.

347. Ce projet de Code stipule que « *Quiconque a des relations sexuelles avec une personne du même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent milles francs ou d'une de ces peines seulement* ».

350. Le Comité de droits de l'homme des Nations Unies s'est prononcé sur le sujet de l'homosexualité à plusieurs reprises et a conclu que la criminalisation de l'acte sexuel entre des personnes consentantes de même sexe constitue une violation du droit à la vie privée et au droit à l'égalité devant la loi. Le même Comité a aussi déclaré qu'une telle criminalisation est également contraire aux articles 17(1) et 26 du Pacte international sur les droits civils et politiques (*Toonen contre Australie*, mars 2004), ainsi qu'aux obligations fondamentales d'égalité et de non-discrimination énumérées dans la Charte Africaine des droits de l'homme et des peuples. Les conventions citées ci-dessus font partie intégrante de la Constitution du Burundien conformité avec son article 19.

351. Ce même Comité a affirmé cette position à plusieurs reprises, soit en demandant aux Etats de retirer les lois criminalisant l'homosexualité, soit en leur demandant de les mettre en conformité avec le Pacte. Le Comité considère également que ces lois vont à l'encontre du droit relatif à la vie privée, qu'il soit applicable ou non et « vont à l'encontre de la mise en oeuvre des programmes éducatifs concernant la prévention du SIDA » en poussant les groupes déjà marginalisés vers la clandestinité.

352. Cette position a également été adoptée par la Cour Européenne des droits de l'homme (*Dudgeon vs United Kingdom, Norris v Ireland; Modinos v Cyprus*) et la Cour Constitutionnelle de l'Afrique du Sud (*National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*).

353. La criminalisation de l'homosexualité aurait par ailleurs un effet préjudiciable sur les efforts du Burundi dans sa lutte contre le SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité combinée avec des efforts visant à lutter contre la discrimination des

homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si le projet de code en question entre en vigueur, celui-ci aurait pour effet d'entraver l'accès à l'information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA au Burundi, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

354. Ce projet de loi aurait enfin un effet néfaste sur la situation des défenseurs des droits de l'homme qui oeuvrent pour la promotion et la protection des droits des homosexuels, bisexuels et transsexuels. En effet, cette loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

355. Ainsi, le projet de loi criminalisant l'homosexualité n'est pas conforme au droit international des droits de l'homme et aux obligations légales internationales du Burundi et il est demandé que les préoccupations exprimées dans la présente lettre soient portées à la connaissance du Sénat lors du prochain examen du projet de loi.

356. Il est enfin noté que lors de l'examen périodique universel du Burundi en date du 2 décembre 2008, le Gouvernement du Burundi a été interpellé sur cette question de la criminalisation de l'homosexualité et qu'il a demandé à disposer de plus de temps pour y répondre convenablement.

## **India**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly, transgender/gender identity, police, physical violence

1244. On 3 December 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion of freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, sent a letter of allegations to the Government concerning Madesh M, Dil Faraz, Kokila, Sahana Bangena and Savita S, members of the *Sangana* crisis intervention team. *Sangana* is an NGO working on issues related to the human rights of persons belonging to sexual minorities, especially *hijras* (male-to-female transsexuals).

1245. According to the information received, on 20 October 2008, Madesh M, Dil Faraz, Kokila, Sahana Bangena and Savita S went to the Grinagar police station as they had received news about five hijras being arrested and detained, and allegedly been beaten by members of the Grinagar police. As they tried to inquire about the detention of the hijras, the members of the Sangama crisis intervention team were assaulted and detained at the Grinagar police station, and later at the Banashankari police station. They have been accused of offences punishable under Section 143 (*unlawful assembly*), 145 (*joining unlawful assembly ordered to be dispersed*), 147 (*rioting*), and 353 (*obstructing government officials in performing their duty*) of the Indian Police Code. They were brought before a magistrate and placed in judicial custody later that evening. All five crisis team members were released on bail on 22 October 2008.

1246. In the evening of 20 October 2008, approximately 150 human rights activists and lawyers gathered in front of the Banashankati police station to peacefully protest against the arrest and detention of the Sangama crisis team members and to try and negotiate their release. Six delegates from the protestors had been detained for about four hours at the police station and were subjected to physical and verbal abuse. In the meantime members of the

Banashankati police attacked the peaceful protestors with sticks and subjected them to physical, verbal and sexual assault. Thirty-one human rights activists were placed into a small police van, and kept there for about seven hours.

1247. Concern was expressed that the harassment, arrest and detention of the five members of the NGO Sangama may have been solely related to their peaceful activities in defence of human rights, especially their work on the rights of sexual minorities, including hijras. Further concern was expressed that this may have formed part of an ongoing campaign of intimidation of the Bengaluru policeforce regarding hijras and NGOs acting in their defence.

## **Iran (Islamic Republic of)**

### **Urgent appeal**

**Keywords:** freedom of expression, freedom of association, transgender/gender identity, detention, prison officials

1295. On 13 February 2008, the then Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture sent an urgent appeal to the Government concerning Mr. Amin Ghaza'i, aged 29, writer, chief editor of an electronic journal called "ArtCult", and prominent member of an organisation called "Students for Freedom and Equality" ("Daneshjouyan-e Azadi Khah va Beraber Talab"). Some other student members or affiliates of this group were already been the subject matter of a joint urgent appeal to the Government by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 21 January 2008.

1296. According to the information received; Mr. Amin Ghaza'i was arrested in Tehran on 14 January 2008 at a meeting along with 14 other students. He was currently being held without charge or trial in solitary confinement in Section 209 of Evin Prison in Tehran and had been ill-treated. On 15 January 2008 the police searched Mr. Ghaza'i's home and confiscated his computer and papers. On 30 January 2008, Mr. Ghaza'i was allowed a three minute telephone conversation with his family in the presence of guards, during which he appeared to be intimidated. Apart from this phone call Mr. Ghaza'i had not been allowed access to his family or a lawyer. Mr. Ghaza'i suffers from a peptic ulcer, heart problems, and asthma.

1297. Mr. Ghaza'i has published articles on the internet and written books about gender identity and has translated into the Persian language books on the subject, which are banned in the Islamic Republic of Iran. In view of his reported incommunicado detention concerns were expressed as to Mr. Amin Ghaza'i's physical and mental integrity and his state of health. Further concern was expressed that the arrest and detention of Mr. Amin Ghaza'i might solely be connected to his reportedly peaceful exercise of his rights to freedom of expression and association.



## **Urgent appeal**

**Keywords:** freedom of expression

1387. On 14 August 2008, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding Ms Shirin Ebadi, Nobel Peace Prize laureate and lawyer.

1388. According to the new information received, on 8 August 2008, an article was published on the website of the Iranian Republic News Agency (IRNA), entitled “Ebadi bogged down with the Bahai’s”. The article reacts to the fact that Ms Ebadi has undertaken the defence of seven members of the Baha’i community. The article contains allegations such as that human rights are used as means of pressure to impose Western norms to other cultures, and criticizes Ms Ebadi for taking up the defence of homosexuals, Bahai’s and “CIA agents”. The article also refers to the conversion to the Baha’i faith of Ms Nargess Tavassolian, the daughter of Ms Ebadi. Another article, which was published on IRNA’s website, alleged that the reason why Ms Ebadi took up the defence of the seven Baha’i members was in connection with her daughter’s conversion to the faith. On 4 August 2008, the newspaper ‘Kayhan’ also published an article insinuating links between Ms Ebadi, Israel and the Baha’i community.

1389. Concern was expressed that the recent slander campaign may be perceived as incitement to further harassment against Ms Ebadi and her family, especially in conjunction with the death threats against her in April 2008. Further concern was expressed with regard to the physical and psychological integrity of Ms Edabi and her family, as well as her ability to carry out her work.

## **Kenya**

### **Urgent appeal**

**Keywords:** freedom of expression

1511. On 19 September 2008, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal to the Government regarding acts of intimidation against Ms. Poulaine Kimani, a member of the Gay and Lesbian Coalition of Kenya.

1512. According to information received, on 23 August 2008, Ms. Poulaine Kimani appeared on a television program which dealt with the issue of homosexuality in Kenya. On 25 August 2008, she was the victim of intimidation by a group of men in her community, while on 1 September 2008 she was chased and threatened with rape by a group of men. On 2 September 2008, she received threats in an envelope which was found outside her place of residence. These incidents were reported to the police by Ms. Poulaine Kimani but she is unaware of whether there has been any investigation into them yet.

1513. Concern was expressed that the acts of intimidation against Ms. Poulaine Kimani may have been related to her activities in defense of the rights of the gay and lesbian community in Kenya. Further concern was expressed for the physical and psychological integrity of Ms. Poulaine Kimani.

## **Observations**

1514. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communications of 6 July 2005, 27 July 2005, 17 September 2007, 15 January 2008, 23 January 2008, 31 January 2008, 26 February 2008, 22 May 2008, 15 August 2008 and 19 September 2008. She considers response to her communications an important part of the cooperation of Governments with her mandate. She urges the Government to respond to the concerns raised by her, and provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

## **Kyrgyzstan**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly, freedom of association, police

1558. On 24 April 2008, the then Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter of allegation to the Government concerning the alleged warrantless raid of the community centre of the organization Labrys, an organization working for the rights of lesbian, gay, bisexual and transgender persons (LGBT). Labrys was founded in April 2004 to assist and advocate for the rights of lesbian and bisexual women, gay men, and transgender people. It has been a legally registered nongovernmental organization since 14 February 2006. The community center of Labrys, opened in February 2008, serves as a place for meeting and discussion, as well as shelter for victims of violence.

1559. According to the information received, on the evening of 8 April 2008, three police forced their way into the building housing the group Labrys in Bishkek, which at the time was hosting a dinner for local and international LGBT groups from the Anti AIDS Association and Tais Plus, as well as for international partner organizations – COC (Cultuur en Outspannings-Centrum) and HIVOS (Humanist Institute for Cooperation with Developing Countries) from the Netherlands, and Gender Doc-M from Moldova. The police threatened to arrest anyone who did not produce identification, and searched private files.

1560. It was reported that the police demanded to see the organization's registration documents, statutes, and rent statements. The police gained entry to a locked private office and went through desks and files. A short time later, the district police chief arrived and said the officers would leave only if Labrys promised to submit its administrative and financial documents to the police station the following day. Labrys complied with the request.

1561. This is reportedly the second time that the police have raided Labrys without a warrant. On 4 June 2006, police forced their way into the group's office after verbally threatening that they would rape everyone inside.

1562. The mandate-holders expressed their concern that the warrantless raid of the community centre of Labrys may be related to the activities of the organization in defense of human rights, in particular LGBT rights, and also that restrictions or breaches of the right to freedom of association may discourage defenders working on the protection of the right of marginalized or stigmatized groups to carry out their activities.

## **Turkey**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of association, police

2574. On 17 April 2008, the then Special Representative sent a letter of allegations to the Government concerning the Lambdaistanbul Cultural Center, an organization advocating the rights of lesbian, gay, bisexual and transgender (LGBT) persons in Turkey.

2575. According to the information received, on the afternoon of 7 April 2008, approximately a dozen plainclothes policemen entered the Lambdaistanbul Cultural Centre with a search warrant. The search of the premises lasted approximately two hours, during which time the entire office was examined and the identity cards of all those who were present or entered the Center were collected. Documents and files concerning the financial and membership structure of the organization were confiscated by the officers when they left.

2576. Reports indicated that the search may have taken place as a result of a complaint filed, accusing the organization of participation in illegal prostitution and procurement of sex workers. It was also reported that the Cultural Center had been under observation by the authorities, who had been taking note of those entering and leaving the building. The association was also in the midst of legal proceedings to apply for official status as an organization, reportedly following a complaint by the city governorship that Lambda should be closed down as the group constituted a threat to Turkish family values and public decency. The fifth hearing was reportedly scheduled for April 17.

2577. Concern was expressed that the aforementioned events may be directly related to the activities of the Lambdaistanbul Cultural Center in defense of human rights, particularly the rights of LGBT persons and further concern was expressed for the physical and psychological integrity of its members.

### **Response from the Government**

2578. In a letter dated 26 May 2008, the Government responded to the communication sent on 17 April 2008 concerning the “Lambda Istanbul LGBT Solidarity Association”. The Government reported that on 18 March 2008, a complaint was lodged against the “Lambda Istanbul LGBT Solidarity Association”, claiming that its administrators have been involved in illegal prostitution through the activities of the association.

2579. The Public Order Division of the Directorate for Security of Istanbul conducted a preliminary inquiry in connection with the allegations. On the basis of the report prepared by the Public Order Division officers following the inquiry, a request for warrant to search the premises of the above-mentioned association was made to the Office of the Chief Public Prosecutor of Beyoglu, which was conveyed to the Beyoglu 2nd Criminal Court of Peace. The Court issued a search warrant on 7 April 2008 under Articles 116 and 119 of the Criminal Procedure Code.

2580. Article 116 of the Criminal Procedure Code allows for the law enforcement authorities to search the premises of a suspect if there are reasonable grounds to believe that an evidence of the crime might be obtained. Article 119 stipulates the legal procedure to be followed for a search warrant.

2581. On 7 April 2008 the search was carried out in the premises of the “Lambda Istanbul LGBT Solidarity Association” in accordance with the court’s decision. The lawyer of the Association filed an appeal with the Beyoglu 9th Criminal Court of First Instance against the search warrant on 14 April 2008. Having considered the appeal, the court decided (Decision No. 2008/81) that there were no grounds for correcting the previous court decision.

2582. The Government noted that the legal proceeding concerning the deficiencies and irregularities in the Statue of the Association is pending before the Beyoglu 3rd Civil Court of First Instance. On 30 October 2007, the Court instructed an expert witness, who is examining the case file.

## **Uganda**

### **Letter of allegations/Communications sent**

**Keywords:** transgender/gender identity, freedom of association, torture, police

2608. On 12 August 2008, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a letter of allegations on the situation of Usaam “Auf” Mukwaya, Onziema Patience, Valentine Kalende, and Julian “Pepe” Onziema, all members of Sexual Minorities Uganda (SMUG), a local organization advocating on behalf of Uganda’s lesbian, gay, bisexual, and transgender (LGBT) people and on HIV/AIDS issues in Uganda; and Nikki Mawanda, programme coordinator of Transgender, Intersex, Transsexual (TIT), an organization that supports the needs of transgender, transsexual, and intersex Ugandans. According to the allegations received:

2609. On 4 June 2008, police arrested Usaam Mukwaya, Onziema Patience, and Valentine Kalende in Kampala, after a protest at the 2008 “HIV/AIDS Implementers Meeting.” The activists were protesting against statements made by Kihumuro Apuuli, director general of the Uganda AIDS Commission, who on 2 June declared that “gays are one of the drivers of HIV in Uganda, but because of meager resources we cannot direct our programmes at them at this time.”

2610. Police took the three activists to the Jinja Road Police Station and detained them until 6 June. Authorities finally released the activists on bail after charging them with criminal trespass, under Section 302 of the Uganda Penal Code, despite the fact that sponsors of the Implementers Meeting had invited the activists to attend the conference.

2611. The defendants last appeared before a Kampala court on 25 July, where several witnesses of the State (mainly police officers) and the defendants were cross-examined. The judge adjourned the hearing until 1 August. At previous hearings held on July 9 and 10, the judge adjourned the case following the public prosecutor’s request to give police additional time to locate new witnesses.

2612. After the court hearing, a patrol car stopped the taxi Mukwaya was riding in and four men identifying themselves as police officers, three of them with uniforms and the fourth with plain clothes, detained him and put him in the police’s pickup truck. The police officers drove towards Jinja Road where a civilian car with tinted screens was waiting for them parked in front of Shoprite. Police officers forced Mukwaya into the other car with three other policemen; two wore suits and one wore a police uniform. The men drove around for about 30 minutes and took Mukwaya to an undisclosed location. Two female and one male police officer were waiting. The police confiscated Mukwaya’s mobile phone, which contained contact names and numbers of members of SMUG and other LGBT rights organizations. The

police asked Mukwaya if he was Nikki, when he said he was not they asked him his name. The three police officers then pushed him through a dark corridor into a room where they made him sit on a chair. Mukwaya, 26, saw four other men around his age in the room. One had a broken leg and the other three appeared to have been beaten. One of the women officers scraped his knuckles with a razor-like object. His abductors asked him questions in Luganda, a local language, about the activists' funders and supporters, and about his own role "among the homosexuals." They also demanded information about Pepe and Nikki. They demanded the address of the SMUG office, as well as the residence and office of Mukwaya's lawyer. Before dawn, they forced him to strip to his underwear, asked him if he was a man or a woman, and made him walk around the room in his underwear. In the room, there was a machine that suspended above a cushioned bench, and a prisoner's arms are restrained by extensions alongside the device. As it is lowered by a switch, the extensions stretch the prisoner's arms. Mukwaya was ordered by a policeman to lie on the bench face-up, and threatened that he should provide information on the organization's source of funds. Mukwaya said nothing and his arms were stretched, leaving him with intense pain. After about 15 minutes, the machine was turned off and he was asked how much he was paid to be a homosexual. When he did not answer, they left him sleeping on the bench. The following day, 26 July, the police dropped Mukwaya off at Mulago round-about in central Kampala. On 28 July, activists accompanied Mukwaya to file an official complaint before the Uganda Human Rights Commission (UHRC). He also visited a doctor who documented the ill-treatment. On 29 July he went to the African Centre for Torture Victims (ACTV) to receive psychological support. As of today, police have not detained the people responsible for Mukwaya's torture.

2613. Concern was expressed that Usaam Mukwaya, Onziema Patience, Valentine Kalende, and Julian Onziema, and Nikki Mawanda may be at risk of torture or other forms of ill-treatment. Concern was also expressed in regard to the physical and psychological integrity of Usaam "Auf" Mukwaya. Further concerns were expressed that the arrests and detention of Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, Julian Onziema and Nikki Mawanda might be solely connected to the reportedly non-violent exercise of their right to freedom of opinion and expression, of assembly and of association.

### **Urgent appeal**

**Keywords:** police, freedom of association

2614. On 22 September 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal on the situation of George Oundo and Kiiza Brendah. George Oundo and Kiiza Brendah work as lesbian, gay, bisexual and transgender (LGBT) activists, promoting and protecting the rights of the lesbian, gay, bisexual and transgender community in Uganda. According to the information received:

2615. On 10 September 2008 George Oundo and Kiiza Brendah were arrested in the home of Oundo, in the village of Nabweru, Wakiso district, outside Kampala. The policemen removed gay literature from Oundo's home, and transferred them to Nalukologolo police station. On 11 September 2008 they were transferred to Nabweru police station, where they were subjected to extensive interrogation about lesbian, gay, bisexual and transgender (LGBT) human rights defenders. George Oundo and Kiiza Brendah were detained for seven days and released on 18 September 2008. They were held at the police station without charge and have not been brought before a court within the constitutional limit of 48 hours. Upon their release on 18 September they were ordered to present themselves at the police station again on 24 September 2008.

2616. Concern was expressed about the arrest and detention without charges of George Oundo and Kiiza Brendah. Concern was also expressed with regard to their physical and psychological integrity. Further concerns were expressed that the arrests and detention of George Oundo and Kiiza Brendah might be solely connected to the reportedly nonviolent exercise of their right to freedom of opinion and expression, of assembly and of association.

### **Observations**

2617. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communications of 5 August 2005, 30 November 2007, 12 August 2008 and 22 September 2008. She considers response to her communications an important part of the cooperation of Governments with her mandate.

2618. The Special Rapporteur welcomes the end of the judicial proceedings against Usaam “Auf” Mukwaya, Onziema Patience, Valentine Kalende, and Julian “Pepe” Onziema. However, she remains concerned about the vulnerability of human rights defenders advocating for the rights of lesbian, gay, bisexual and transgender people in Uganda, and urges the Government of Uganda to create a safe environment conducive to their legitimate work.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Serbia including Kosovo, A/HRC/7/28/Add.3, 4 March 2008**

**Keywords:** freedom of association, police, threats

### *I. VISIT TO SERBIA*

#### D. The human rights defenders community

53. Other areas of work include the rights of minorities, discrimination, women’s rights, lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, disability, and children’s rights. Defenders provide legal aid, monitor and report on prisoners’ rights, and conduct human rights education and training. Some defenders file cases at the European Court of Human Rights and refer to the decisions of the Court at the national level.

#### E. Recommendations

77. Adopt a national plan or strategy on human rights with specific measures for the protection of human rights defenders and their activities. The plan or strategy should include the protection of defenders in vulnerable positions, like women defenders in rural areas and defenders working on lesbian, gay, bisexual, transgender and intersex rights. The Government should engage non-governmental organizations and other members of civil society in the process of discussion of such a strategy at the national level.

### *II. VISIT TO KOSOVO*

#### B. The Ahtisaari status proposal

##### 2. Human rights defenders today

107. Defenders working for the rights of lesbians, gays, transgender and intersex (LGBTI) persons are in a particularly vulnerable situation. They have chosen not to register as an association for fear of being then identified as individuals and harassed or attacked. In the recent past, members of this group were confronted with homophobic episodes at the hands of the police, who did not protect their privacy when they reported cases of attacks. The Special Representative was reassured by the Ministry of Interior, who was aware of these episodes, acknowledged the problem, and was committed to addressing it. Improvements in the attitude

of the police were confirmed by defenders working on LGBTI rights, who stressed the need to train the police on these issues. They also pointed to the ostracism they face vis-à-vis other human rights organizations, which, with few exceptions, are openly against considering LGBTI issues as human rights issues.

#### E. Conclusions and recommendation

##### 10. The role of the international community

153. The process of consultation with civil society and human rights defenders should be institutionalized and systematized so that their active participation in legislative and policy decision-making is ensured, particularly that of defenders working on the human rights of people discriminated against or marginalized. These include defenders working on Roma, Ashkali and Egyptian rights, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights.

#### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Former Yugoslav Republic of Macedonia, A/HRC/7/28/Add.4, 3 March 2008**

**Keywords:** freedom of association, anti-discrimination legislation

#### *II. HUMAN RIGHTS DEFENDERS*

26. In terms of thematic areas of work, some trends identified in the 2004 report were confirmed, such as the strength of the women's movement, the steady growth of capacity and activities carried out by defenders working on the rights of Roma. New thematic areas are now on the agenda of human rights defenders. Work on the human rights of persons with disabilities has become prominent in the country. Another emerging area is the rights of lesbians, gays, bisexual, transgender and inter-sexual persons (LGBTI). While the difficult access to public authorities for NGOs working on LGBTI rights is a concern, the Special Representative notes as a positive development the solid work of defenders on LGBTI rights, who are well-integrated among human rights organizations, formed a coalition to pursue improvements in the legislation, and achieved changes in media ethics banning homophobic positions.

#### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/7/28/Add.1, 3 March 2008**

#### **Honduras**

#### **Urgent appeal**

**Keywords:** freedom of association, police, prison officials

1027. El 5 de abril de 2007 la Representante Especial, junto con el Relator Especial sobre la tortura señalaron a la atención urgente del Gobierno la información recibida con respecto a la Sr. Donny Reyes, miembro de la asociación Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT). De acuerdo con las informaciones recibidas, el 18 de marzo, hacia las tres de la madrugada, el Sr. Donny Reyes salió de las oficinas de la asociación Arcoiris y mientras esperaba un taxi, seis agentes de policía en dos autos de patrulla se detuvieron junto a él y le pidieron que subiera a uno de los autos. Cuando Donny Reyes se negó los agentes empezaron a golpearle y le insultaron

diciendo “a estos maricones hay que desaparecerlos de aquí”. El Sr. Donny Reyes fue trasladado a la comisaría de Comayagüela, donde lo encerraron en una celda con otros 57 hombres. Donny Reyes fue golpeado, desnudado y violado por cuatro detenidos, después de que un agente de policía gritara “miren, aquí les traigo a una princesita, ya saben lo que tienen que hacer”. El Sr. Reyes fue dejado en libertad al día siguiente después de pagar un soborno de 200 lempiras.

1028. Tres días después el Sr. Donny Reyes denunció lo sucedido ante la fiscalía y desde entonces viene siendo objeto de intimidaciones por parte de la policía. Desde el 27 de marzo autos de patrulla se estacionan varias veces al día durante periodos de cinco minutos frente a las oficinas de la asociación Arcoiris, en un aparente intento por presionar al Sr. Donny Reyes para que abandone sus denuncias. Igualmente, se expresó temor de que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos del Sr. Reyes, en particular su trabajo por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT).

1037. El 22 de Mayo de 2007 la Representante Especial, junto con el Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria y la Relatora Especial sobre la violencia contra la mujer señalaron a la atención urgente del Gobierno la información recibido en relación con en relación con Josef Fabio Estrada (también conocido como Débora), coordinador del grupo de travestís Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT) y profesional del sexo en Tegucigalpa. El 5 de abril de 2007, la Representante Especial sobre los defensores de derechos humanos y el Relator Especial sobre la cuestión de la tortura enviaron un llamamiento urgente al Gobierno de su Excelencia respecto a Donny Reyes, tesorero de la Asociación antes mencionada.

1038. De acuerdo con la información recibida, el 20 de abril de 2007, hacia las 22:00 horas, Josef Fabio Estrada fue agredido por cinco desconocidos mientras trabajaba en el barrio rojo habitado por gays y travestís en Comayagüela, Tegucigalpa. Según informes, uno de los individuos habría intentado quitarle la peluca antes de arrojarle al suelo y golpearle. Según se informa, un auto patrulla de la policía se habría estacionado al lado del lugar donde se ubicaban los profesionales del sexo minutos antes de las 22:00 horas. Los agentes policiales no solamente habrían sido testigos de la golpiza propinada al Sr. Estrada, sino que habrían alentado a los agresores gritando “¡Maten a este maricón, golpéenlo!”. El Sr. Estrada utilizó un objeto afilado, posiblemente una botella rota, que habría encontrado en el suelo, para defenderse, hiriendo a uno de sus agresores y recién en ese momento los agentes policiales intervinieron.

1040. Se expresó temor de que estos hechos estén relacionados con la actividad en defensa de los derechos humanos, particularmente de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT), realizada por el Sr. Estrada. Se recuerda que otro miembro de la Asociación Arcoiris, el Sr. Donny Reyes, fue arrestado el 18 de marzo de 2007 durante 24 horas en la estación de policía de Comayagüela. Según la información recibida, los agentes le golpearon y luego le llevaron a otra estación donde le dejaron durante más de seis horas en una celda con otros detenidos. Donny Reyes fue golpeado y violado repetidamente por otros detenidos, instigados, según se afirma, por un agente policial. Se afirma también que miembros de la policía vienen intimidando y hostilizando al Sr. Reyes por haber denunciado los hechos ante la Fiscalía.

### **Respuesta del Gobierno**

1042. Al llegar a la Penitenciaría Central fue trasladado al módulo de diagnóstico, durante tres días reubicándolo el 30 de abril fue ubicado en el módulo de procesados 1, hogar 17; lugar donde se encuentran los grupos vulnerables. En un principio vivió en compañía de otro homosexual, posteriormente le fue asignado una celda en la que vive hasta la fecha. Admitió



que sí recibió malos tratos físicos y psíquicos por parte de personas cuyo nombre se reserva por temor a represalias, pero dejó entrever que se trata de personas que se encuentran internadas en la Penitenciaría Nacional. No se recibió información sobre Medidas Cautelares.

## **India**

### **Letter of allegations/Communications sent**

**Keywords:** police, transgender/gender identity

1076. On 10 May 2007 the Special Representative sent a letter of allegations to the Government concerning Ms Subhajit Dey, a transgender Peer Educator at the AIDS Prevention and Control Society, West Bengal State. Ms Dey is also a member of the Pratyay Gender Trust, an organisation which works to defend the rights of those marginalized due to their sexual orientation in India. She has been involved in the Targeted Intervention Project for Communities at risk of HIV/AIDS, in Calcutta.

1078. According to reports, Ms Dey was then brought inside the police station where she was met by 8 to 9 police officers, the majority of whom were in civilian clothing. The officers accused Ms Dey of being a criminal before subjecting her to a barrage of verbal abuse and sexual assault. After her ordeal, Ms Dey was permitted to leave the police station on the condition that she would never return to Sealdah again. Concern was expressed that the aforementioned events may be directly related to Ms Subhajit Dey's work in the defence of human rights in India, in particular her work defending the rights of those marginalised because of their sexual orientation in the country.

### **Observations**

1107. The Special Representative reiterates her concerns for the situation of human rights defenders representing vulnerable groups, such as lesbians, gays, bisexual and transgender (LGBT) persons and members of caste groups facing discrimination. The situation of the Dalit community is of particular concern as human rights defenders advocating their rights face entrenched prejudice from many sectors of society.

1108. The Special Representative hopes that the Government of India will continue in its efforts to work for the improvement of conditions for those belonging to such communities and those working in defence of their rights.

## **Israel**

### **Response from the Government**

**Keywords:** freedom of assembly

1248. In a letter dated 5 November 2007, the Israeli Government further responded (following initial responses on 7 and 18 December 2006) to a letter of allegations sent by the Special Representative on 1 December 2006 concerning threats against participants in a proposed Gay Pride Parade, which had been scheduled to take place in Jerusalem on 10 November 2006. In the letter the Government stated that resistance to the holding of the parade from ultra-orthodox members of the Jewish community, Muslims, and Christians has been particularly strong, following violence at the previous year's parade, including the stabbing of three participants by an ultraorthodox man.

1249. Following protracted negotiations between the Parade organisers and the authorities a route had been agreed for the parade scheduled for 10 November 2006; however some days beforehand, the security situation in Jerusalem deteriorated and the city's District Commander informed the organisers that there would not be sufficient police forces available to guarantee security at the parade. The Government letter also stated that the authorities suggested postponing the event for one week but that the parade organisers elected to instead hold a rally at the Hebrew University's Stadium of Givat Ram in Kiryar Ha'leom. This event, approved by police, was attended by thousands of people and passed off peacefully.

## **Moldova (Republic of)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly

1408. According to the information received, on 11 April 2007, Chisinau City Council banned the Moldovan Pride parade, organised by Information Center GenderDoc-M, on the grounds that it could pose a public disorder threat, that it would promote sexual propaganda and that it would undermine Moldovan Christian values. The event was due to take place in Chisinau city between 27 and 29 April 2007 and was planned as part of the Council of Europe's "All Different, All Equal" campaign. In February 2007, the Supreme Court held that the City Council had acted illegally in banning the event in 2006. According to reports, the Parade was prohibited on two previous occasions. On 28 April 2006, the office of the General Mayor in Chisinau, Moldova rejected an application by the Information Center GenderDoc-M to hold a peaceful demonstration in Chisinau on 5 May 2006. The purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. The reported reasons for the rejection of the application were based on "the statements of religious organisations that they will organise protest actions if the demonstration organised by GenderDoc-M is allowed, and also based on letters of complaint from individuals living in Chisinau."

1409. Furthermore, on 16 May 2005 the office of the General Mayor in Chisinau, Moldova reportedly rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It was also reported that in June 2005 this decision was overturned by the Court of Appeal in Moldova. Concern was expressed that the above events were related to the activities of Information Center GenderDoc-M in defence of human rights, in particular its work in defence of the rights of sexual minorities in Moldova.

## **Nepal**

### **Letter of allegations/Communications sent**

**Keywords:** police, freedom of association, transgender/gender identity

1492. On 31 July 2007 the Special Representative sent a letter of allegations to the Government concerning Mr Alex Chimling (called Juli), a meti and HIV/AIDS outreach worker with The Blue Diamond Society (BDS), a community-based sexual health advocacy service for local networks of lesbian, gay, bisexual, transgender and intersex groups in Kathmandu, Nepal.

1493. According to information received, on the evening of 14 July 2007, Mr Chimling was approached for help by an acquaintance who informed him that herself and four other transgender persons or 'metis' were subject to beatings and sexual abuse by three policemen

from Janasewa Police Station in Ratna Park, Kathmandu. Mr Chimling called the emergency number to alert the police. When two policemen from Durbar Marg Police Station arrived, they, together with Mr Chimling, continued to the park where the three policemen from Janasewa Police Station, including the Sub-Inspector Pradeep Chand, were beating the four remaining metis. However, the policemen only watched the incident without wanting to intervene. The Sub-Inspector recognised Mr Chimling and started searching his bag while simultaneously beating him with batons, and kicking him on the back, legs and face. When the Sub-Inspector found that Mr Chimling was carrying condoms in his bag, he proceeded to verbally abuse him and said that he was behaving in an immoral and illegal manner. The Sub-Inspector then instructed the two policemen from Durbar Marg Police Station to take Mr Chimling and one of the other metis into custody.

1496. Concern was expressed that the aforementioned mistreatment of Mr Alex Chimling may have been in relation to his human rights activities in defence of the rights of the lesbian, gay, bisexual, transgender and intersex persons. Further concern was expressed for the physical and psychological integrity of Mr Chimling and other staff members of the BDS.

### **Response from the Government to a communication sent before 2 December 2006**

**Keywords:** police

1515. Furthermore, in a letter dated 5 June 2007, the Nepalese Government responded to a letter of allegations sent by the Special Representative, together with the Special Rapporteur on violence against women on 1 December 2006. The urgent appeal sent was concerning alleged verbal abuse of and threats made by police officers against a group of people, including Ms Madan Rai Chamling, a human rights outreach worker and member of the Blue Diamond Society, a non- Governmental organization working with sexual minorities lesbian, gay, bisexual and transgender (LGBT) persons.

1516. The Government response stated that, the location of the alleged incident, Thamel, was one of the most crowded areas in Kathmandu, and as such was the scene of regular clashes and arguments. The letter further stated that the police were merely engaged in facilitating the smooth flow of traffic and had not been involved in taking photographs or filming the activities of the aforementioned, nor had they verbally abused or harassed them.

### **Poland**

#### **Response from the Government**

**Keywords:** threats

1659. In a letter dated 6 August 2007, the Polish Government responded to an urgent appeal sent by the Special Representative on 15 November 2006, concerning threats made against Ms Hejna Katarzyna, a member of the Campaign against Homophobia in Torun, by members of the neo-Nazi organization Blood & Honour (BH). The Government letter stated that the BH-Poland website (Redwatch) which displayed Ms Katarzyna's personal information, and as such facilitated the threats made against her, was based on a server in the US, where the law permits this. The Prosecutor's Office asked US law enforcement agencies for legal assistance in obtaining information relating to server and the IP numbers of the computers logging onto the website.

1660. As a result of Polish-US cooperation, the website was closed down twice, but since US law does not ban such organisations, the website was again operational. In view of a criminal investigation being conducted into this activity, the General Inspector for the Protection of Personal Data had refrained from opening administrative proceedings in connection with infringement of regulations on the protection of personal data. To date, Ms Hejna had not complained to the General Inspector concerning the use of her personal data by people connected to BH-Poland.

### **Observations**

1661. The Special Representative thanks the Government of Poland for its response to the communication of 15 November 2006, and trusts that the Government will continue to make efforts to ensure that intimidation of and threats made against human rights defenders working in defence of LGBT rights are thoroughly investigated, thus allowing them to carry out their work without fear of such harassment.

## **Tunisia**

### **Réponse du Gouvernement**

**Keywords:** freedom of assembly

1856. Le 1er février 2008, le Gouvernement a répondu à la lettre d'allégation envoyée le 19 décembre 2006. Le Gouvernement informe que s'agissant de l'empêchement allégué le 3 décembre 2006 d'une réunion du Comité de soutien à la LTDH, il y a lieu de préciser que la ligue comptait organiser à cette date un séminaire sur « les orientations futures de la Ligue et les droits de l'homme ». C'est à la demande d'un huissier de justice mandaté par les plaignants que le Procureur de la République territorialement compétent a autorisé l'assistance de la force publique pour l'exécution du jugement en référé décidant, le 18 avril 2006, la suspension du congrès de la Ligue et l'arrêt de tous les actes préliminaires ou préparatoires du congrès projeté, en attendant de trancher le litige quant au fond. C'est ainsi que l'intervention autorisée de la police, pour en assurer l'exécution, s'est déroulée selon les procédures usuelles et dans le cadre de la loi.

## **Turkey**

### **Response from the Government**

**Keywords:** freedom of expression

1899. The same letter of 25 May 2007 also responded to a letter of allegations, sent by the Special Representative on 17 August 2006, concerning the confiscation by police, on 8 August 2006 of the magazine published by Kaos GL, a Gay Lesbian Cultural Research and Solidarity Organisation. The letter stated that Mr Umut Güner, owner and publisher of the magazine, was acquitted of the charge of publishing obscene materials, by the decision of the 2nd Court of First Instance of Ankara, dated 28 February 2007. The Court also decided that the confiscated editions of the magazine be returned to Mr Güner once the decision had been finalized.

## Uganda

### Letter of allegations/Communications sent

**Keywords:** freedom of expression

1907. On 30 November 2007, the Special Representative sent a letter of allegations to the Government concerning Ugandan and Kenyan defenders of Lesbian, Gay, Bisexual, Transgender (LGBT) rights, including Ms Victor Juliet Mukasa, and members of Sexual Minorities Uganda (SMUG) as well as Amakula, a renowned non- LGBT film organisation based in Kampala which promotes African talent and human diversity. According to the information received, on 23 November 2007, Ugandan and Kenyan defenders of LGBT rights, including Ms Victor Juliet Mukasa and members of SMUG, were prevented from delivering their speeches at the Commonwealth Heads of Governments Meeting (CHOGM) Speaker's Corner in Kampala during the People's Space. They were reportedly forcibly removed from the building by police officers and were threatened with sticks not to enter the premises again.

1908. The LGBT defenders waited outside quietly for seven hours to be allowed back in the building, in vain. On 22 November 2007, Amakula showed at CHOGM a film that addressed homosexuality. The following day, two members of Amakula were expelled from the People's Space. The People's Space was established "to provide opportunities to share in the diversity and richness of the Commonwealth people", and was designed to give people "renewed energy to facilitate social change with a clear sense of building the future together". Concern was expressed that the expulsion of the aforementioned individuals from the People's Space may be related to their peaceful activities in defence of LGBT rights.

### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/7/28, 31 January 2008**

#### *II. FROM ACTIONS TO IMPACT: FOLLOW-UP TO THE ACTIVITIES OF THE SPECIAL REPRESENTATIVE*

##### B. Communications

##### 2. Thematic analysis of communications

32. The report presented in 2007 to the General Assembly (A/62/225) built on that analysis and focused on the right to protest in the context of freedom of assembly. In order to give prominence to the protest element of the analysis, the information was organized on the basis of: groups of protesters i.e. women defenders, student activists, trade unionists and defenders working on the rights of lesbian, gay, transgender and bisexual persons (LGBT); and thematic areas of protest, i.e. the anti-globalization movement, demonstrations linked to elections, peace demonstrations and protests linked to land rights and environmental claims.

### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Indonesia, A/HRC/7/28/Add.2, 28 January 2008**

**Keywords:** anti-discrimination legislation, freedom of association

#### *IV. THE CHANGING SITUATION OF HUMAN RIGHTS DEFENDERS IN INDONESIA*

##### B. Vulnerable groups of human rights defenders

##### 2. Defending the rights of LGBTI and HIV/AIDS persons

59. The Special Representative is particularly concerned about the lack of protection for defenders who are engaged with issues that are socially sensitive such as the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons or public awareness on HIV/AIDS.

60. She received credible reports of violations against such defenders. For instance, Ms. Maria, Gaya Nusantara, East Java, who advocated for equal rights for LGBTI persons in East Java, was subsequently assaulted and intimidated. The victim filed a complaint with the police, but they reportedly did not register her complaint, allegedly in the absence of national legislation on LGBTIs. She further sought legal counselling from lawyers, but they refused to take up her case because of the apprehension of the issue of LGBTI in the country as a “foreign product”. In another case, Mr. Hartoyo, an advocate for women’s rights in Aceh, was subjected to torture and degrading treatment by police officers while in custody because of his sexual orientation. The Special Representative was further informed of intimidation directed at Ms. Baby Jim Aditya in Jakarta, who was warned in 2003 not to attend the funeral of a patient who had died from AIDS.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1, 27 March 2007**

**Argentina**

**Letter of allegations/Communications sent**

**Keywords:** freedom of association

29. The Special Representative is disappointed by the National Appeal Courts decision to uphold the resolution passed by the General Inspectorate for Justice (IGJ) to deny the Asociación de Lucha por la Identidad Travestí Transexual (ALITT) legal personality. She is concerned that the IGJ’s argument that ALITT’s objectives do not comply with the definition of ‘for the common good’ as outlined in Article 3 (2) of the Criminal Code, is contrary to Article 5 of the Declaration on human rights defenders.

**Belarus**

**Letter of allegations/Communications sent**

**Keywords:** freedom of association

61. On the 23 November 2006, the Special Representative, sent an urgent appeal concerning the detention of seven activists including Mr Vyacheslav Andreev, Ms Sviatlana Siarheichyk, Mr Svyatoslav Sementsov, Ms Tanya Ivanova, Mr Aleksei Filipenko, Ms Natallia Kavalchuk and Mr Viachaslau Bortnik who promote the human rights of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus and are current members of the Organising Committee of the International LGBT Conference which was due to be held in Minsk. According to the information received, on 8 November 2006, at approximately 8:20pm, the seven aforementioned persons were arrested and detained when the apartment in which they were holding a meeting, was broken into by the police. It is alleged that the police confiscated materials relating to the conference and brought the activists to the Zheleznodorozhnyi Borrow Police Department where they were questioned in relation to the schedule of the conference, the list of participants and the venue of the conference. Four of the activists were released after two hours but Vyacheslav Andreev, Svyatoslav Sementsov and Viachaslau Bortnik were detained until 5:30pm the following day. All were released without charge.

However, the International LGBT Conference was cancelled by the organizers after their arrest. Concern was expressed that the events described above may represent attempts by the Belarusian authorities to prevent the activists from carrying out their legitimate activities, in particular raising attention to the situation of LGBT persons in Belarus. Furthermore there were concerns regarding reported amendments to the Criminal Code adopted on 15 December 2005 which may be used to detain members of LGBT groups, or discredit their legitimate activities.

### **Observations**

71. The Special Representative reiterates her concerns that the charges imposed upon these human rights defenders were due to the organization's activities to monitor the election in Belarus. She is also concerned that such amendments to the Criminal Code may be used to detain members of lesbian, gay, bisexual, transgender and intersex (LGBTI) groups, or discredit their legitimate activities and encourages the Government to reply to her communication of 23 November 2006.

## **Brazil**

### **Letter of allegations/Communications sent**

**Keywords :** freedom of association, death, torture

#### **Killings or attempts of killing**

92. Claudio Alves dos Santos, from the Centro de Referencia contra a Violencia e a Discriminacao Homossexual (CERCONVIDH). CERCONVIDH is an organisation that works in defence of the rights of homosexuals and lesbians and engenders communication between public security bodies, human rights organizations and homosexuals and lesbians. Mr Alves dos Santos had worked as a volunteer for CERCONVIDH and had also organized and participated in workshops to inform homosexuals and lesbians of their rights. According to the information received, Mr Alves dos Santos disappeared on 7 October 2005. His body was found three days later, reportedly with signs that he had been tortured. It is further alleged that in May and June 2005, the coordinator of CERCONVIDH had received death threats that were reported to the Human Rights Ombudsman, but that no investigations were undertaken by the authorities. Grave concern is expressed that the murder of Mr Alves dos Santos and the alleged threats against him are connected with the activities of CERCONVIDH in defence of the human rights of homosexuals and lesbians, in particular because Mr Alves dos Santos and CERCONVIDH had campaigned against impunity in relation to the alleged massacre of 30 transvestites which took place in Baixada Fluminense on 31 March 2005.

## **El Salvador**

### **Letter of allegations/Communications sent**

**Keywords :** threats, hate crimes, freedom of association

255. El 17 de agosto de 2006, el Representante Especial señaló a la atención urgente del Gobierno la información recibida en relación con William Hernández, director de la Asociación Entre Amigos (AEA), una organización que proporciona educación sexual a lesbianas, gays, bisexuales y personas transgénero en El Salvador. La AEA ha denunciado públicamente las violaciones de derechos humanos contra lesbianas, gays, bisexuales y personas transgénero en El Salvador. De acuerdo con la información recibida, el 30 de mayo de 2006 las oficinas de la AEA en San Salvador habrían sido allanadas por personas desconocidas quienes habrían registrado los archivos y habrían dejado amenazas escritas en

trozos de papel diciendo “esto es su merecido” y “culeros se mueren”. Según se informa, los asaltantes se llevaron algunos documentos, incluyendo un plan escrito por una manifestación ante la Asamblea Legislativa oponiéndose a la ratificación de una reforma constitucional que prohibiría el matrimonio entre parejas del mismo sexo y la adopción de niños por parejas del mismo sexo. El 1.º de junio de 2006 William Hernández habría sido amenazado por una persona desconocida con una pistola ante la oficina de la AEA en San Salvador. Según se informa, este individuo se acercó a William Hernández y le amenazó, diciendo: “tenéis que dejar de joder en la Asamblea. Ya busqué dentro y no encontré nada y aquí voy a encontrar los que busco... deja de joder o antes de que te cases te mato.” El asaltante habría agarrado un maletín que llevaba William Hernández. Se expresó temores de que el supuesto allanamiento de las oficinas de la AEA y las amenazas contra William Hernández pudieran estar relacionados con el trabajo que hace la AEA en defensa de los derechos humanos de lesbianas gays, bisexuales y personas transgénero en El Salvador.

## **Iran (Islamic Republic of)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, freedom of association

342. On 19 October 2006, the Special Representative sent an urgent appeal concerning a human rights activist from Iran, Mohammad Babaei (commonly known as “Mani”), who is the current Health Secretary of the Iranian Queer Organization (IRQO) which was formerly known as the Persian Gay and Lesbian Organization (PGLO). Mr Babaei provides mental health counseling services to lesbians, gays, bisexuals, and transgendered persons (LGBTs), and also counsels HIV/AIDS victims in Iran. According to the information received, in recent weeks Mr Babaei’s employer at the pharmaceutical company where he had been working, notified the police authorities that Mr Babaei had been actively involved in activities with the PGLO, although the organization is not aligned to any political party. According to reports, this information enabled the police to link Mr Babaei to interviews he had given to the British Broadcasting Corporation and the Canadian Broadcasting Corporation in which the interviewee was critical of the Government’s treatment of gays and lesbians in Iran. The police reportedly came to Mr Babaei’s house in order to arrest him for the alleged interview and for his activities as an activist, but he could not be found. He has since left the country, fearing for his safety. Concern was expressed for the physical integrity of Mr Babaei as it is feared that he may face persecution if he returns to Iran. Further concern was expressed that the actions taken by the authorities may be related to Mr Babaei’s legitimate activities in defence of human rights in Iran, in particular his work promoting the human rights of LGBTs and HIV/AIDS victims in Iran.

## **Israel**

### **Letter of allegations/Communications sent**

**Keywords:** threats, freedom of assembly

374. On 1 December 2006, the Special Representative sent a letter of allegation to the Government of Israel concerning threats against participants in the proposed Gay Pride Parade which was scheduled to take place in Jerusalem on 10 November 2006. According to the information received, the organisers of the Gay Pride Parade met with authorities in order to establish a less controversial route for the march which would avoid ultra-Orthodox Jewish neighbourhoods as the police had stated that they could not provide adequate security for the original route. However the march was later cancelled altogether due to the severe nature of



the threats issued, as last year on 30 June 2005 an ultra-orthodox Jewish man reportedly stabbed three people during the fourth annual gay pride parade. Concern was expressed about the reported threats and harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation. Further concern was expressed that such harassment might prevent peaceful demonstrators from carrying out their legitimate human rights activities.

### **Observations**

381. She urges the Government to respond to her communications and the concerns raised by her in her: allegation letter of 22 December 2005 concerning Qasem Qasem; the urgent appeal of 12 January 2006 concerning Catherine Richards; the joint urgent appeal of 20 January 2006 concerning Hassan Mustafa Hassan Zaka; the joint urgent appeal of 14 March 2006 concerning Ziyad Muhammad Shehadeh Hmeidan; the allegation letter of 11 April 2006 regarding Brian Morgan; the allegation letter of 28 April 2006 concerning Sister Anne Montgomery, Tore Ottesen , Karien Laier, Brian Larsen and Anna Svennson; the urgent appeal of 19 May 2006 concerning Mr Ziyad Muhammad Shehadeh Hmeidan; the joint allegation letter of 2 June 2006 concerning Ms Kate Maynard; the joint allegation letter of 6 June 2006 concerning Hassan Mustafa Hassan Zaka; the joint letter of allegation of 17 October 2006 concerning the Ansar Al-Sajeen (Prisoners Friends' Association) in Israel and in the West Bank and Mr Munir Mansour; the joint urgent appeal of 25 October 2006 concerning Ahmad Abu Haniya; joint letter of allegation of 1 December 2006 concerning Ziyad Muhammad Shehadeh Hmeidan; letter of allegation of 1 December 2006 concerning Tove Johansson of the International Solidarity Movement; and letter of allegation of 1 December 2006 concerning the Gay Pride Parade.

## **Jamaica**

### **Observations**

**Keywords:** death

388. The Special Representative regrets that no response was received from the Government of Jamaica concerning the killing of Mr Harvey despite a request issued by her in the Communications Report of 2006. The Special Representative would urge the Government to provide substantive detailed information as to whether an investigation has been initiated into the death of Mr Harvey. The Special Representative would be interested in receiving a response from the Government of Jamaica as she has received information highlighting the dangers faced by human rights defenders working with lesbian, gay, transgendered and bisexual and HIV/AIDS issues in Jamaica.

## **Latvia**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly

402. On 30 November 2006 the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of urgent appeal concerning participants in "Riga Pride 2006", a peaceful protest organised to promote awareness of the human rights of lesbian, gays, bisexual and transgender (LGBT) persons. According to the information received, on 19 July 2006 the Riga City Council denied an application by a number of organizations to hold "Riga Pride 2006" on 22 July 2006. The organizations appealed this decision but it was upheld by the Administrative Court of Latvia

on 21 July 2006, allegedly on the grounds that the proposed event would pose a threat to national security. Detailed information regarding the reasons for this decision was reportedly classified as a state secret and will not be made available to the organisations for another five years. Following these events, the organisers of Riga Pride 2006 decided to organize a number of events on 22 July 2006 in place of the original protest march. It is reported that participants attended a service at the Anglican Church in Riga on the morning of 22 July 2006 and, as they were leaving the church, a group of anti-gay protestors who had gathered outside threw eggs and human excrement at them and verbally abused them. Reportedly, police officers who were present at the time, refused to assist individuals who asked them for assistance and protection as they were making their way from the church. Concerns are expressed that the denial of a permit to the organizers of “Riga Pride 2006” may have been aimed at preventing defenders of the rights of sexual minorities from carrying out their peaceful activities to raise awareness of the universality of human rights, to be applied to all persons regardless of their perceived sexual orientation. Further concerns are expressed by the allegations that police officers failed to provide adequate protection to participants in the service at the Anglican Church in Riga on 22 July 2006.

## **Moldova (Republic of)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly

454. On 23 May 2006, the Special Representative sent an allegation letter concerning a peaceful demonstration by the organisation Information Center GenderDoc-M, a non governmental organisation that defends the rights of sexual minorities in Moldova. According to the information received, on 28 April 2006 the office of the General Mayor in Chisinau rejected an application by the Center to hold a peaceful demonstration in Chisinau on 5 May 2006. It is reported that the purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. It is further reported that the reasons for the rejection of the application were based on “the statements of religious organisations that they will organize protest actions if the demonstration organised by GenderDoc-M is allowed, and also based on letters of complaint from individuals living in Chisinau.” Furthermore, according to the information received, on 16 May 2005 the office of the General Mayor in Chisinau rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It is also reported that in June 2005 this decision was overturned by the Court of Appeal in Moldova. Concern was expressed that the above events were related to the activities of Information Center GenderDoc-M in defence of human rights, in particular their defence of the rights of sexual minorities in Moldova.

## **Nepal**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of association, police, transgender/gender identity

485. On 1 December 2006, the Special Representative sent an urgent appeal concerning Madan Rai Chamling, a human rights outreach worker and member of the Blue Diamond Society. Members of the Blue Diamond Society were subject of an urgent appeal sent by the Special Representative of, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable

standard of physical and mental health on 12 August 2004. The Blue Diamond Society is a nongovernmental organization working with sexual minorities, lesbian, gay, bisexual and transgender (LGBT) persons on health issues, including outreach education and prevention of HIV/AIDs, and campaigns for non-discrimination against persons based on their sexual orientation in Nepal. According to the information received, on 7 July 2006 evening, Madan Rai Chamling and other "metis" (persons who are men by birth but identify as women) working in the Tri Devi Marg area in Thamel were verbally abused by members of the Durbar Marg Police when Madan Rai Chamling questioned them as to why photos and videos were being taken of the metis. Previously that day, the Durbar Marg Police had arrived in Thamel, and proceeded to record on video a group of metis. One of the police officers, whose name is known to the Special Representative and the Special Rapporteur, gave instructions to the cameraman as to the whereabouts of the metis. The metis attempted to escape and hide their faces from the camera but they were reportedly forced to show their faces. The police threatened to arrest and detain the metis if they didn't cooperate. Furthermore, it is alleged that the police falsely told the metis that they were sent by the Director of Blue Diamond Society in an attempt to film them. Concern was expressed that the above acts of verbal abuse against Madan Rai Chamling may have been related to her human rights activities, specifically her outreach work with Blue Diamond Society. In addition, concern was expressed that the events represent a sustained campaign by police to harass, intimidate and humiliate metis in Nepal, including by sexual violence.

## **Nigeria**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, freedom of association

511. On 10 April 2006, the Special Representative sent an urgent appeal to the Government concerning a "Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith". According to the information received, on 19 January 2006, the Minister of Justice presented a "Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith" to the Federal Executive Council which was reportedly approved but not yet submitted to the National Assembly. According to the information received, this bill introduces criminal penalties for public advocacy or associations supporting the rights of lesbian and gay people, as well as for relationships and marriage ceremonies between persons of the same sex. In particular, article 7 (1) of the Bill prohibits the "registration of gay clubs, societies and organizations by whatever name they are called [...] by government agencies". Article 7 (3) of the Bill provides for five years imprisonment for "any person involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationships directly or indirectly in public and in private". It also provides the same sentence to anyone who "goes through the ceremony of marriage with a person of the same sex, and "performs, witnesses, aids or abets the ceremony of same sex marriage" (article 8). Serious fears have been expressed that the bill aims at criminalizing activities of human rights defenders working on the rights of gay and lesbians, as well as potentially those engaged in fighting against HIV/AIDS through prevention programs. In particular, serious concern is expressed in view of the restriction such law would place on freedoms of expression and association of human rights defenders and members of civil society, when advocating the rights of gays and lesbians.

## Poland

### Letter of allegations/Communications sent

**Keywords:** freedom of assembly, threats, physical violence

559. On 5 December 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the banning of public events organised by the lesbian, gay, bisexual and transgender community as well as discrimination against this community. According to information received, on 15 November 2005, the mayor of the city of Poznan banned a public event known as the Equality March, which had been organised by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for a discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organisers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including 'Let's get the fags', and 'We'll do to you what Hitler did with Jews'. The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Poznan was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr Lech Kaczynski, the current President of Poland and former Mayor of Warsaw, had stated that the parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorised another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the State must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern was further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment sexual minorities.

560. On 26 April 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the third annual Krakow March for Tolerance, due to take place in Krakow, Poland on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland and aims to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According to the information received, a number of organizations have indicated their fear that past violence against this type of peaceful demonstration is likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance became victims of physical attacks by extreme nationalist

groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly done in a violent manner against the peaceful demonstrators. The Poznan event was brought to the attention of the Government in a communication sent by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Representative on 5 December 2005. The Special Rapporteur and Special Representative thank the Government of Poland for its prompt response to their communication and acknowledge the findings of the Constitutional Tribunal and notes that the abovementioned decisions banning the marches were subsequently quashed in appeal proceedings. Nevertheless, we would like to express our continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encourage the Government of Poland to protect participants of the Krakow March for Tolerance against any possible discriminatory or hateful abuse. Concern was expressed that such harassment may prevent peaceful demonstrators from carrying out their legitimate human rights activities.

562. On 19 October 2006 the Special Representative sent an urgent appeal concerning threats and acts of intimidation against Katarzyna Hejna, member of Kampania Przeciw Homofobii (Campaign against Homophobia) in Torun. She is also a founding member of ALERT, an organization which supports civil society in Poland and is a volunteer with Polska Akcja Humanitarna (Polish Humanitarian Organization). According to the information received, Katarzyna Hejna has been the subject of a campaign organized by a group calling themselves "Redwatch" who have established a website identifying people who they claim are "engaged in anti-fascist, anti-racist activities... all kinds of supporters and activists of broadly understood homosexual lobby[ing]". In October 2005, Ms Hejna was actively involved in organizing a peaceful demonstration "Marsz rownosci idzie dalej" (Equality March Goes Further) to protest against the authorities' decision to ban public assemblies of LGBT groups in Poznan. According to reports, Ms Hejna's personal details have been published on the website, including photographs of her, with her name, telephone number and email address, despite the fact that according to Polish law it is illegal to publish such details without the consent of the individual concerned. Since the publication of her details on the aforementioned website, Ms Hejna has reportedly received threatening emails and has been verbally harassed in the street. It is reported that Ms Hejna has made a written statement to the police but she is not aware of any progress that has been made with regard to her case. Concern was expressed for the safety and security of Ms Hejna as it was feared that the publication of her name on the "Redwatch" website may have represented an attempt to deter her from carrying out her legitimate activities in defence of human rights, in particular the defence of LGBT rights. It was alleged that an individual, who was named on the "Redwatch" website was stabbed on the Warsaw subway in June 2006.

#### **Communications received**

563. In a letter dated 21 February 2006, the Government replied to the communication of 5 December 2006. The Government stated that on 26 March 2006 an application was made by the International Lesbian and Gay Culture Network (ILGCN) for permission to organize an Equality Parade in May 2004. On 24 May 2004 the Mayor of Warsaw issued a decision banning the Equality Parade on the grounds that it could pose a potential threat to lives, health and property. The ILGCN appealed against the various decisions made in 2004, and on 10 October 2005 the Voivodeship Administrative Court discontinued proceedings as immaterial. The Government noted that in November 2005 the Voivodeship Administrative Court held that a decision to prohibit a proposed demonstration was based on Article 8 paragraph 2 of the Law on Assemblies and that the court did not anticipate a threat from the organizers but rather from opponents of the planned gathering. It was noted that Article 57 of the Constitution of

Poland guarantees freedom of assembly and that a limitation on such freedom may be imposed by statute. On 18 January 2006 the Constitutional Tribunal ruled that Article 65 of the Law on Road Traffic, 1997 was incompatible with Article 57 of the Polish Constitution with the incorporation of the word “assemblies”. The Tribunal noted that freedom of assembly was a special political freedom of the individual subject to constitutional protection. The Government stated that freedom of assembly constituted a basic human right and that the public authorities were obliged to protect groups taking part in public assembly. The Government also noted that problems pertaining to discrimination are discussed during training provided by State institutions and many professional groups, such as the PHARE training project of 2002. It was also noted that steps have been taken by the Polish authorities to provide judicial officials with anti-discrimination training.

565. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006. The Government stated that the National In-Service Training Centre (NITTC) is responsible for teacher training at all levels in Poland and accordingly all documents published by the NITTC should be consistent with the contents of the national curricula. The current curriculum was introduced by the Regulation of the Minister of National Education and Sport of 26 February 2002. It was noted that Compass – ‘a manual on human rights education for young people’, contains chapters related to sexuality, homophobia and sexual orientation. The Government indicated that the contents of the manual were not suitable as a teaching aid and that it was contradictory to the general education curriculum of Poland which conforms with the Constitution of Poland, which protects marriage defined as a ‘union of a man and a woman’. It was also noted that the English translation of the document differs from the Polish document and that a number of links to Polish gay websites are included in the document. The Government concluded that Mr Sieltaycki was responsible for teacher training within the national curriculum and that as Deputy Chairman of the National Committee for the European Year of Citizenship through Education, Mr Sielatyeki was in a position to suggest to the Committee that the manual be published without the NITTC’s involvement. Mr Sieltaycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

### **Observations**

566. The Special Representative thanks the Government of Poland for its detailed responses to her communications and is encouraged by its willingness to investigate alleged violations. Nevertheless the Special Representative would like to express her continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and would encourage the Government of Poland to protect participants of public demonstrations such as the Krakow March for Tolerance against any possible discriminatory or hateful abuse. The Special Representative wishes to remind the Government of its obligations under Articles 6 (b) and (c), 7 and 12 of the Declaration on human rights defenders.

### **Russian Federation**

#### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly

568. On 11 May 2006, the Special Representative sent an urgent appeal concerning the Moscow Gay Pride Parade, which is due to take place on 27 May 2006 to mark the anniversary of the abolition of Soviet laws against homosexuality in 1993 and the International Day against homophobia. The Gay Pride Parade is a peaceful demonstration organized to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According

to the information received, on 16 February 2006 the press spokesman of the Mayor of Moscow told journalists that “the Moscow government is not even going to consider allowing a gay parade” and stated “that the Mayor was firm that the city government will not allow a gay parade in any form, open or disguised, and any attempts to organize an unsanctioned action will be resolutely quashed”. It has also been reported that the first vice speaker of the State Duma stated that “there are several million people in Moscow who do not want to have this procession. Who is going to protect their rights?” In the light of such statements by the authorities, concern was expressed that those who wish to peacefully participate in such a parade may be prevented from doing so. The Special Representative encouraged the Government of Russia to ensure its positive obligations to support, facilitate and protect human rights defenders and that the Moscow Gay Pride Parade is allowed to take place.

### **Observations**

583. The Special Representative continues to be concerned about the deteriorating situation in terms of the right to freedom of expression and information in the Russian Federation, and is particularly disappointed by reports that first vice speaker of the State Duma stated in relation to the Moscow Gay Pride Parade that “there are several million people in Moscow who do not want to have this procession. Who is going to protect their rights?” which was the subject of a communication sent on 11 May 2006. The Special Representative urges the Government to provide a detailed response to this case and to consider Article 7 of the Declaration which establishes that everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

### **Turkey**

#### **Letter of allegations/Communications sent**

**Keywords:** freedom of association

686. On 2 June 2006 the Special Representative sent an urgent appeal concerning the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians (Gokkusagi Dernegi), a non-governmental organization that advocates for the rights of lesbian, gay and transgender persons in Turkey. According to the information received, on 3 March 2006 the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians (Gokkusagi Dernegi) was established in the city of Bursa. On 24 May 2006 it is reported that the Deputy Governor of Bursa initiated a court procedure at the Principal Registry, requesting the closure of the organization on the grounds that its establishment violated Articles 56 and 60 of the Turkish Civil Code, which prohibit the establishment of an organization that “is against the laws and morality rules”. It is alleged that in the request for closure, the Deputy Governor also referred to Article 11 of the European Convention of Human Rights. Concern was expressed that the reported court procedure was an attempt to close the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians and that it was an attempt to prevent those who defend the rights of sexual minorities from forming, joining and participating in non governmental organizations.

**Joint Statement from the Special Representative of the Secretary-General on Human Rights Defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 February 2007**

*INDEPENDENT UN EXPERTS EXPRESS SERIOUS CONCERN OVER DRAFT NIGERIAN BILL OUTLAWING SAME-SEX RELATIONSHIPS*

The Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène; the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt issued the following statement today:

"We express our deep concern about the draft "Bill for an Act to Make Provisions for the Prohibition of Relationship between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith" which was heard before the Judiciary Committee of the Nigerian House of Representatives on Wednesday 14 February 2007. Provisions of the draft Bill discriminate against a section of society, are an absolutely unjustified intrusion of an individual's right to privacy and contravene Article 1 of the Universal Declaration of Human Rights that '(a)ll human beings are born equal in dignity and rights'.

The Bill, as currently drafted, heightens the potential for stigmatization, discrimination and intolerance against individuals for their actual and imputed sexual orientation or their gender identity, raising serious concerns regarding their protection. We are apprehensive that, if adopted, the proposed law will make persons engaging in, or perceived to be engaging in, same sex relationships in Nigeria more susceptible to arbitrary arrests, detention, torture and ill-treatment and expose them even more to violence and attacks on their dignity. The proposed law may lead to the denial of opportunities and conditions necessary for the enjoyment of economic, social and cultural rights. In particular, the Bill is likely to undermine HIV/AIDS education and prevention efforts by driving stigmatized communities underground, posing a threat to the right to the highest attainable standard of physical and mental health.

In this context, we note with concern that same-sex relationships are already prohibited and criminalized in Nigeria and carry the death penalty. During the last session of the Human Rights Council in Geneva, the Government of Nigeria expressed its view that the death penalty by stoning for "unnatural sexual acts" such as lesbianism and homosexuality may be considered "appropriate and just punishment".

In addition to clear elements of discrimination and persecution on the basis of sexual orientation, the Bill contains provisions that infringe freedoms of assembly and association and imply serious consequences for the exercise of the freedom of expression and opinion. The introduction of criminal penalties of imprisonment in the Bill, if enacted, would in particular have a chilling effect for local human rights defenders who undertake peaceful advocacy on the adverse human rights implications of the law for lesbian, gay, bisexual and transgender persons. Such provisions are contrary to the principle recognized in the Declaration on Human Rights Defenders that "everyone has the right, individually and in association with others to develop and discuss new human rights ideas and principles and to advocate their acceptance".

Whilst the significance of regional and national particularities are acknowledged, we nevertheless remind the Government that such particularities or historical, cultural or religious practices, though significant in many aspects, do not absolve governments from their duty to promote and protect all human rights and fundamental freedoms and to ensure that such protection is universally applied and respected.



We therefore urge the Government to reconsider the Bill and to ensure that any law that is adopted conforms to international human rights norms and to Nigeria's obligations under international law. Nigeria's recent progress in institutionalizing democratic processes and practices strengthens the hope that the Government will give due consideration to our serious concerns and will take immediate steps to withdraw the Bill".

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/4/37, 24 January 2007**

**Keywords:** freedom of association, discrimination

7. During the reporting year, the Special Representative participated in numerous events organized by non-governmental organizations (NGOs) including the World Social Forum in Karachi, Pakistan, the Carter Center Conference in Atlanta, United States of America, the World Forum of Human Rights in Nantes, France, the First International Conference on lesbian, gay, bisexual and transgender human rights in Montreal, Canada, and the 2nd Human Rights Defenders' Forum in Asia, held in Bangkok.

*II. THE WORK OF HUMAN RIGHTS DEFENDERS IN THE FIELD OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

A. Legal context for activities for the promotion of economic, social and cultural rights

17. The economic, social and cultural rights, discussed further in section B below in the context of various activities of defenders, are protected by the following provisions in the ICESCR: article 6 (the right to work); article 7 (the right of everyone to the enjoyment of just and favourable conditions of work); article 8 (the right of everyone to form trade unions and join the trade union of his choice, including, inter alia, the right to strike); article 9 (the right to social security); article 10 (widest possible protection to be accorded to the family; marriage with the free consent of intending spouses; special protection to be accorded to mothers during a reasonable period before and after childbirth; special measures of protection and assistance for all children and young persons); article 11 (the right of everyone to an adequate standard of living, including adequate food, clothing and housing); article 12 (the right to enjoy the highest attainable standard of physical and mental health); article 13 (the right to education); and article 15 (the right of everyone, inter alia, to take part in cultural life). Furthermore, States parties have an obligation to guarantee that all ESCR are exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (art. 2 (2)) and must be applied equally to men and women (art. 3). It is in the context of this provision that in chapter III below, the Special Representative focuses on defenders who are at particular risk, namely those who defend the rights of indigenous people and minorities; lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and women human rights defenders.

B. Human rights defenders and their work on economic, social and cultural rights

6. The right to health

74. (...) In August 2004 a communication was sent to the Government of Nepal concerning members of the Blue Diamond Society, an NGO that provides outreach work for LGBTI persons and campaigns to combat HIV/AIDS. A private writ had been filed to close down the organization on the grounds that it "promoted homosexuality" and 39 members were arrested on the street without charge and held without food or water for 15 hours. Three members were alleged to have been beaten and raped by the police. In December 2005, a

communication was sent to the Government of Jamaica, concerning Lenford “Steve” Harvey who was killed allegedly because of his activities in the defence of the rights of marginalized people in Jamaican society, including persons living with HIV/AIDS.

### *III. DEFENDERS AT PARTICULAR RISK*

#### *B. Defending the rights of lesbian, gay, bisexual, transgender and intersex persons*

93. Both ICESCR (art. 2 (2)) and ICCPR (art. 2 (1)) contain non-discrimination clauses, and article 7 of the Declaration on Human Rights Defenders specifically provides that “everyone has the right, individually and in association with others to develop and discuss new human rights ideas and principles and to advocate their acceptance”. The 1993 Vienna Declaration and Programme of Action confirmed that “(a)ll human rights are universal, indivisible and interdependent and interrelated. [...] While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” and thus, to ensure that the protection of international human rights norms is universally applied.

94. Since the establishment of the mandate, the Special Representative has acted on 36 cases of alleged attacks and threats against defenders of LGBTI rights in all regions.

95. Communications have been sent to Belarus, the Holy See, Latvia, Moldova, Poland, Russia, Turkey, Nigeria, Uganda, India, Nepal, Argentina, Chile, Ecuador, Honduras, Jamaica and Iran. Defenders have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities.

96. In numerous cases from all regions, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, denied registration of organizations working for LGBTI rights and police officers have, allegedly, beaten up or even sexually abused these defenders of LGBTI rights. The authorities have generally attempted to justify action against these defenders by arguing that “the public” does not want these demonstrations to take place, or these organizations to be registered, or that “the people” do not want LGBTI people in their community. The Special Representative recalls articles 2 and 12 of the Declaration on Human Rights Defenders to remind States of their responsibility for protecting defenders against violence and threats. States are also responsible for, inter alia, ensuring that all programmes for training of law enforcement officers and public officials include appropriate elements of human rights teaching (art. 15).

97. In December 2004, the Special Representative communicated her concerns to the Government of Jamaica regarding published comments of the Police Federation’s Public Relations officer condemning the role of “so-called” human rights organizations and dismissing concerns regarding violence against LGBTI defenders, stating that “the Government and police cannot be held responsible for ... the cultural responses of the population ...”.[fn] In January 2006, the Special Representative sent her concerns to the Government of Nigeria concerning a draft bill which would, if approved, introduce criminal penalties for public advocacy or associations supporting LGBTI rights. In June 2006, a

communication was sent to the Government of Poland concerning the Director of the National In-Service Training Centre who was dismissed by the Minister for Education, allegedly for his involvement in the publication and dissemination of a Council of Europe manual on human rights education for young people, which included issues in relation to sexual orientation.

fn: This was allegedly in response to Human Rights Watch's publication "Hated to death: Homophobia, Violence and Jamaica's HIV/AIDS epidemic" (16 November 2004).

**D. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

<http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Dominican Republic, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, 18 March 2008**

**Keywords:** discrimination

*VI. JOINT RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE INDEPENDENT EXPERT ON MINORITY ISSUES*

119. An independent national institution for the promotion and protection of human rights should be established and empowered, in accordance with the Paris Principles, with the independent authority to work to combat all forms of discrimination in a holistic manner, including on all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. The experts note Law No. 19-01 in this respect, establishing a human rights ombudsman's office (*Defensor del Pueblo*) and urge the implementation of this law in practice.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Estonia, A/HRC/7/19/Add.2, 17 March 2008**

**Keywords:** anti-discrimination legislation, hate crimes

*III. POLITICAL AND LEGAL STRATEGY OF THE PUBLIC AUTHORITIES*

- A. Legal and institutional framework to combat racism and racial discrimination
  - 1. Constitutional and legislative provisions

20. The Constitution of Estonia establishes the general right to non-discrimination under its Article 12, which provides that “No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds”. This principle is further specified in the Penal Code (§ 152), which establishes a possibility of punishment by fine, detention or one year of imprisonment to any “unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status”.

21. Article 12 of the Constitution provides that “the incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable”. The Penal Code (§ 151) increases the scope of the prohibition by referring additionally to colour, sex, language, origin, sexual orientation, financial or social status. Different levels of punishment are established, ranging from a fine to 3 years of imprisonment.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Lithuania, A/HRC/7/19/Add.4, 7 February 2008**

**Keywords:** anti-discrimination legislation

*II. LEGAL FRAMEWORK, PUBLIC POLICIES AND VIEWS OF STATE OFFICIALS*

A. The legal and institutional framework to combat racism and racial discrimination  
The Law on Equal Treatment and the Equal Opportunities Ombudsperson

24. The broad provisions established in the Constitution are specified in the Law on Equal Treatment approved on 18 November 2003, entering into force on 1 January 2005. The purpose of the Law is to “ensure the implementation of human rights laid down in the Constitution” and “to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs” (art. 1.1). The Law makes explicit reference to Lithuania’s human rights obligations laid down in both international and national instruments and spells out the specific responsibilities of State and municipal institutions, educational institutions, employers and consumer service providers.

26. The Law on Equal Treatment expanded the role of the Equal Opportunities Ombudsperson, who is responsible to receive complaints from persons that allege being subject to discriminatory actions and to oversee the general implementation of the Law. Prior to 2005, the Ombudsperson was responsible primarily for issues of gender equality. However, since the adoption of the Law on Equal Treatment, its mandate was expanded to cover various forms of discrimination, namely on the basis of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. The Ombudsperson is allowed to investigate complaints filed not only by citizens, but also foreigners and stateless persons. An important element of the Ombudsperson’s mandate is the power to initiate investigations at her discretion and not only in response to existing complaints.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Summary of cases transmitted to Governments and replies received, A/HRC/4/19/Add.1, 5 June 2007**

**Germany**

**Keywords:** discrimination

66. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a 30-question questionnaire concerning a number of issues, including attitudes towards equality between men and women, homosexuality and freedom of religion. The questionnaire included questions such as: “Where do you stand on the statement that a wife should obey her husband and that he can hit her if she fails to do so?”; “Imagine that your adult son comes to you and says he is homosexual and plans to live with another man. How do you react?”; “What do you think if a man in Germany is married to two women at the same time?” and “Were the perpetrators of the attacks of September 11 freedom fighters or terrorists?”

67. The Special Rapporteurs expressed their concern that an obligation imposed only on the citizens of the 57 member States of OIC could be discriminatory, especially considering the large Turkish community living in Germany. It was further reported that, under the new legislation, those who pass the test can have their citizenship revoked if they are found guilty of acting in conflict with their responses to the questions.

## **Poland**

### **Communication sent**

**Keywords:** freedom of assembly, freedom of association

137. On 26 April 2006, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding the third annual Krakow March for Tolerance, which was due to take place in Krakow, Poland, on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland and aims to provide a platform for discussion about tolerance, antidiscrimination and respect for the rights of all persons regardless of their perceived sexual orientation.

138. According to the information received, a number of organizations had indicated their fear that past violence against this type of peaceful demonstration was likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance were victims of physical attacks by extreme nationalist groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right-wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly in a violent manner and against the peaceful demonstrators.

139. The Poznan event had already been brought to the attention of the Government of Poland in a communication sent by the Special Rapporteur and the Special Representative of the Secretary-General on the situation of human rights defenders on 5 December 2005 (see E/CN.4/2006/16/Add.1, paras. 72-73).

140. Nevertheless, the Special Rapporteur and the Special Representative expressed their continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encouraged the Government of Poland to protect participants in the Krakow March for Tolerance against any possible discriminatory or hateful abuse.

### **Reply from the Government**

141. On 14 June 2006, the Government of Poland sent a reply to the urgent appeal sent by the Special Rapporteur on 26 April 2006, informing him that the Krakow authorities had taken all the necessary measures to ensure that freedom of assembly was not restricted. Two gatherings were authorized to take place on 28 April 2006: the March of Krakow Tradition and Culture and the March of Tolerance. To avoid possible confrontation with the former, the organizers of the March of Tolerance proposed a procession route in consultation with the Krakow police. Since the organizers of both public gatherings in Krakow met all the legal requirements necessary to conduct a demonstration, there were no grounds for prohibiting either the March of Tolerance or the March of Krakow Tradition and Culture. Thus, the municipal authorities ensured freedom of peaceful assembly to participants in both demonstrations.

142. The Government further reported that meetings with the organizers had been held to ensure the security of the participants. At the same time, it was agreed that representatives of the Krakow municipal authorities would also participate in the security operation. Seeing that in the past participants in the March of Tolerance had been attacked by hooligans, the police

decided that special security measures should be engaged to protect the gathering. A total of 435 police officers were assigned to protect both demonstrations, the great majority of whom provided security for the March of Tolerance.

143. When the counter-demonstrators became aggressive, the police formed a cordon around the marchers, protecting them from possible incidents. Two attempts were made to block the procession. The police responded by ordering the troublemakers to disperse, and then used force against them. These measures were commensurate with the situation, and excessive force was avoided in restoring public order and security. During the operation, the police detained 11 individuals for disturbing the peace.

144. The Government indicated that the Krakow municipal authorities, while recognizing that some demonstrations might irritate or upset individuals who opposed their ideas or objectives, acted on the correct assumption that people should be free to organize demonstrations without fear of violence on the part of their opponents. Such fear could prevent associations or groups from openly expressing their views on various important social issues. True freedom of peaceful assembly must not be limited solely to abstention from intervention by the State; sometimes it requires the competent authorities to become actively involved. In ensuring the security of the march, police allowed participants to safely manifest their views.

145. Finally, the Government noted that these measures were concordant with international human rights agreements binding on Poland, and also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly on 9 December 1998.

### **Follow-up to previously transmitted communications**

**Keywords:** freedom of assembly

146. On 21 February 2006, the Government replied to the Special Rapporteur's letter dated 5 December 2005 concerning the banning of assemblies organized by the sexual minority community in Warsaw (June 2004 and May 2005) and Poznan (November 2005). The Government of Poland indicated that it did not share the concern expressed by the Special Rapporteur in connection with the abolition of the Office of the Government Plenipotentiary, at the same time determining that "tasks pertaining to the prevention of all forms of discrimination shall be implemented by the Minister of Labour and Social Policy and the remaining members of the Council of Ministers, as competent."

147. Pursuant to an ordinance issued by the Prime Minister on 9 December 2005 concerning the statute of the Ministry of Labour and Social Policy, a department for women's affairs, the family and prevention of discrimination was established within the structure of the Ministry. In accordance with the Ministry's rules of procedure, the department "is responsible for coordination of actions connected with the status of women and the family in society, and implements tasks concerning the prevention of discrimination in all spheres of social, economic and political life, with the exception of matters concerning the prevention of ethnic discrimination" (ordinance of the Minister of Labour and Social Policy of 30 December 2005 introducing the rules of procedure of the Ministry of Labour and Social Policy). The above circumstances indicate that protection against discrimination will now be broader than in the past, since it will not be restricted to issues of gender inequality.

150. The Government of Poland reported also on the training for law enforcement officials concerning the rights of sexual minorities. Problems pertaining to discrimination are discussed during training provided by State institutions to many professional groups. One

example of such training was the PHARE 2002 project “Strengthening AntiDiscrimination Policies” implemented by the Secretariat of the Government Plenipotentiary for Equal Status of Women and Men. A key component of the project consisted in preparing a model and programme of training on the prevention of and fight against discrimination on the grounds of race, ethnic origin, sexual orientation, gender and religion. The training was designed to provide representatives of different professional groups with the knowledge needed to identify and counter discriminatory phenomena and to sensitize them to the possibility of discrimination against different social groups. An additional, long-term assumption of the project was that it would lead to the implementation of similar training by professional associations, thus increasing the number of persons sensitized to discrimination and prepared to counteract it effectively.

152. Poland ratified the International Covenant on Civil and Political Rights on 3 March 1977, thus guaranteeing to all persons on its territory and subject to its jurisdiction full protection of the rights and freedoms envisaged under the Covenant. Discrimination, including against groups of different sexual orientation, is prohibited in a number of legal acts. Any person who has been denied equal treatment may pursue appropriate claims. Protection against discrimination on different grounds is explicitly provided in the Constitution, as well as civil, criminal and labour law. Since 1 May 2004 Poland has also been bound by directives obligating EU member States to ensure individual assistance to victims of discrimination in pursuing their claims connected with discrimination. In particular, the Constitution of the Republic of Poland of 1997 (art. 32) provides that all persons are equal before the law, have the right to equal treatment by public authorities and cannot be discriminated against for whatever reason in political, social or economic life. The Penal Code of 1997 (arts. 256 and 257) prohibits the instigation of hatred because of national, ethnic, racial and religious differences or non-denominationalism, and similarly insulting behaviour. The Civil Code of 1964 (arts. 23 and 24 in connection with art. 415) also provides victims of discrimination with the possibility of seeking damages. Under the Civil Code victims may invoke provisions protecting personal interests to claim damages or compensation. Also, the Labour Code of 1974 prohibits any direct or indirect discrimination in employment, employee recruitment and in work relations.

153. It should be emphasized that the legal regulations prohibiting discrimination grant persons of different sexual orientation the same legal protection as that enjoyed by other persons whose rights have been violated through discrimination. The prohibition of discrimination against all persons in political, social and economic life is a constitutional principle. It is obvious that this also encompasses the prohibition of discrimination on the ground of sexual orientation. The prohibition of this type of discrimination is contained in numerous international agreements to which Poland is a party. Since the Constitution stipulates that an international agreement ratified upon prior consent granted by statute has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes, it should be understood that full institutional protection against all forms of discrimination is ensured within the Polish legal order.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Russian Federation, A/HRC/4/19/Add.3, 30 May 2007**



## Summary

The Special Rapporteur formulates a number of recommendations, including the following:

...

The establishment of an independent institution aiming at the promotion and protection of human rights and the combat against all forms of discrimination with a particular emphasis on racial discrimination and xenophobia and including discrimination on grounds of religion, ethnicity, nationality, citizenship, residence, gender, age, disability and sexual orientation.

## V. RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR

83. The Government should also consider the establishment of an independent body at Federal level aiming at the promotion and protection of human rights and the combat against racism, xenophobia and discrimination in a holistic manner, including discrimination on grounds of race, religion, ethnicity, nationality, citizenship, residence, gender, age, disability, sexual orientation and any other status. The composition of this body, whose work would be supported by regional branches, should be representative of the diversity of Russian society, with its members being appointed by Parliament on the basis of proposals presented by the Government, civil society organizations and cultural, religious and linguistic communities. This body would work in close cooperation with relevant State and civil society actors, in particular the Office of the Ombudsman and regional ombudsmen, and should be given administrative, legal and normative powers to investigate acts of racism and discrimination and provided with adequate human, material and financial resources.

**Political platforms which promote or incite racial discrimination. Updated study by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/5/10, 25 May 2007**

## II. REGIONAL CONTEXTS AND CHARACTERISTICS

### A. Europe

26. In Poland, the League of Polish Families (Liga Polskich Rodzin, LPR), considered by many as a far-right party, is an ultraconservative Catholic and nationalist political party and a partner in the current governing coalition, which has an open racist and anti-Semitic discourse. In June 2006, the European Parliament condemned a rise in racist, xenophobic, anti-Semitic and homophobic intolerance in Poland and urged the Government to tone down its rhetoric or risk sanctions. In September 2006, the Anti-Defamation League called on the Polish Government to remove the head of LPR from his position as minister of education because of the anti-Semitism manifested by his party.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Italy, A/HRC/4/19/Add.4, 15 February 2007**

**Keywords:** anti-discrimination legislation

## VI. RECOMMENDATIONS

69. The Government should consider the establishment by law of an independent national institution for the promotion and protection of human rights in accordance with the Paris Principles and for combating all forms of discrimination in a holistic manner, including all

grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. Pending the establishment of this institution, the Government should consider with urgency the need to increase the level of independence and the human as well as financial resources of the National Office for the Fight against Racial Discrimination.

**Report by Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Switzerland, A/HRC/4/19/Add.2, 30 January 2007**

*V. RECOMMENDATIONS*

At the institutional level, the Special Rapporteur recommends two measures:

...

In order to ensure a holistic approach that takes account of common underlying sources and of the link between all forms of discrimination, the Government should establish a federal commission to promote human rights and combat all forms of discrimination relating to race, religious belief, gender, age, disability and sexual preference.

**Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/4/19, 12 January 2007**

*RESURGENCE OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA*

31. Lastly, on 27 and 28 November 2006, the Special Rapporteur participated in the Race Convention 2006 in London, organized to mark the thirtieth anniversary of the Commission for Racial Equality, during which he talked about the additional challenges that globalization poses to efforts to combat racism, racial discrimination, xenophobia and related intolerance. In this context, he wishes to commend the Commission's outstanding contribution to the campaign against racism in the United Kingdom. He hopes that the new institution, the Commission for Equality and Human Rights, which is to replace the present Commission for Racial Equality, will be able to make combating racism a high priority, while promoting a holistic approach to the fight against all forms of discrimination (including race, religious belief, age, disability and sexual preference), as recommended by the Special Rapporteur in his recent reports.

## **E. SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF**

<http://www2.ohchr.org/english/issues/religion/index.htm/rapporteur/index.htm>

### **Report of the Special Rapporteur on freedom of religion or belief, Summary of cases transmitted to Governments and replies received, A/HRC/13/40/Add.1, 16 February 2010**

**Keywords:** discrimination, religion

#### *II. Summary of cases transmitted and replies received*

##### J. Indonesia

2. Urgent appeal sent on 2 October 2009 jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on extrajudicial, summary or arbitrary executions

#### **Allegations transmitted to the Government**

114. The Special Rapporteurs brought to the attention of the Government information they had received regarding the adoption of the new Islamic Criminal Code (*Qanun Jinayah*) in Aceh. On 14 September 2009, the Aceh Legislative Council adopted a new Islamic Criminal Code which imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposes the punishment of stoning to death for adultery; 100 cane lashes for sexual intercourse outside marriage; between 100 and 300 cane lashes or imprisonment for rape; and 100 lashes for homosexuality. In addition, the new Code legalizes marital rape.

#### **Response from the Government dated 23 December 2009**

116. In its response dated 23 December 2009, the Government indicated that the Province of Aceh is given a special status under law no. 18 of 2001, which incorporated a special system of autonomy. In the preamble of this law, special status is granted to Aceh for its distinct contribution to the formation of the Indonesian nation, as much as for Aceh's unique historical and cultural background, as well as its religious, moral and social values which had been preserved from generation to generation. The special status of Aceh as an autonomous region was expressed through four specific areas over which it had sole decisional power: religious issues, customs, education and the role of the *Ulema* in the local policy-making process. This special status was further reinforced through law no. 11 of 2006 on the Governing of Aceh.

#### **Observations of the Special Rapporteur**

123. The Special Rapporteur is grateful that the Government of Indonesia replied to the joint urgent appeal of 2 October 2009. She would like to refer to General Assembly resolution 63/181, in which the Assembly urges States "to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights" (para. 9 b). The Special Rapporteur also recalls that the General Assembly in the same resolution urges States "to step up their efforts to eliminate intolerance and discrimination based on religion or belief, [...] devoting particular attention to practices that violate the human rights of women and discriminate against women" (para. 12 a). Furthermore, the General Assembly invites all actors to address "situations of violence and discrimination that affect many women as well as other

individuals on the grounds or in the name of religion or belief or in accordance with cultural and traditional practices” (para. 16 b). Moreover, the Human Rights Committee in its general comment no. 22 emphasizes that “[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it”.

**Report of the Special Rapporteur on freedom of religion or belief, Republic of Serbia, including Kosovo, A/HRC/13/40/Add.3, 28 December 2009**

**Keywords:** anti-discrimination legislation

*I. Freedom of religion or belief in Central Serbia and Vojvodina*

C. Domestic legal framework on freedom of religion or belief

13. The Parliament of the Republic of Serbia adopted a law on the prohibition of discrimination in March 2009. The law defines “discrimination” and “discriminatory treatment” as any unjustifiable differentiation or inequitable treatment, i.e. act of omission regarding persons or groups, as well as their family members or people close to them, performed in an overt or concealed manner, on grounds of, inter alia, religious convictions. According to article 18 of the 2009 law, “discrimination occurs when the principle of freedom of expressing one’s religious beliefs is breached, i.e. if a person or group is denied their right to adopt, maintain, express or change their religious beliefs, or to behave in accordance with their religious beliefs”. Shortly before the adoption of the 2009 law, a second paragraph was added to article 18 of the law, providing that “priests’ or other religious officials’ actions that are in accordance with the doctrine, beliefs or goals of the churches and religious communities” registered under the 2006 Law on Churches and Religious Communities should not be deemed to be discriminatory. Reportedly, pressure by religious and conservative groups regarding issues such as religious conversion and free expression of sexual orientation had led to a temporary withdrawal of the bill from the legislative agenda in early March 2009. An amended anti-discrimination law was finally adopted on 26 March 2009 by a narrow majority.

E. Issues of concern for the mandate

23. Furthermore, the recently adopted anti-discrimination law provides for specific exemptions of the prohibition of discrimination with regard to actions of priests or other religious officials which are in accordance with the doctrine, beliefs or goals of registered churches and religious communities. Members of civil society organizations emphasized that this exemption was introduced shortly before the adoption of the 2009 Law on the Prohibition of Discrimination in its article 18 due to lobbying efforts by “traditional” churches and religious communities, inter alia, in order to protect priests against charges of discriminating against others on grounds of sexual orientation.

**Report of the Special Rapporteur on freedom of religion or belief, United Kingdom of Great Britain and Northern Ireland, A/HRC/7/10/Add.3, 7 February 2008**

**Keywords:** religion

*III. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

B. Overview of reported concerns

27. Members of various Christian denominations (Church of England, Church of Ireland, Church of Scotland, Methodist, Presbyterian, Protestant, Roman Catholic, etc.) reported discrimination and violence related to sectarianism, not only in Northern Ireland but also in the rest of the United Kingdom. Furthermore, Christian Students' Unions at several universities were reported to face pressures with regard to their adherence to university equal opportunities policies. In general, the Government's Sexual Orientations Regulations were perceived by some Christians as hampering the work of Christian adoption agencies and establishing a hierarchy of rights with religion having a rather low priority. Another example of this trend was a court judgement which ruled that an employee's freedom to manifest his religious beliefs was not infringed by his dismissal for refusal to agree to work on Sunday. On the other hand, the particular role and privileges of the Church of England were criticized by some Christians as no longer reflecting the religious demography of the country and the rising proportion of other Christian denominations.

### C. Thematic Issues

#### 5. Balancing of competing rights

47. Some recent statutory equality provisions are reported to lead to a clash of religious convictions with other strands, for example sexual orientation. On the one hand, some Christian interlocutors raised their concerns that religion would have to conform to a non-religious world view; while not being opposed to antidiscrimination legislation as such, they felt discriminated by sexual orientation regulations and indicated that many Christian adoption agencies would close if not given an opt-out from having to place children with homosexual couples. On the other hand, members of the lesbian, gay, bisexual and transgender community argued that the existing statutory exemptions already favour religion and they stressed that non-discriminatory delivery of goods and services is crucial especially when public services are contracted out to faith-based organizations.

48. The Special Rapporteur was informed about the differences of the pertinent regulations in Northern Ireland and in Great Britain. The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, which make it unlawful to discriminate or subject another person to harassment on the grounds of sexual orientation, provide for an exception to organizations relating to religion and belief. Thus it is not unlawful for such an organization to restrict membership, participation in activities, the provision of goods, services or activities, or the use or disposal of premises on the ground of sexual orientation if this is necessary to comply with the doctrine of the organization or in order to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. The regulations for Northern Ireland, which came into force on 1 January 2007, however, do not extend the exception to organizations whose sole or main purpose is commercial or to those who act under a contract with and on behalf of a public authority. Similar regulations for the rest of the United Kingdom are in force since 30 April 2007, but the Equality Act (Sexual Orientation) Regulations 2007 in Great Britain do not contain harassment clauses as the corresponding regulations for Northern Ireland. These harassment provisions have been subject to judicial review and the High Court of Justice in Northern Ireland decided on 11 September 2007 to quash them, inter alia, because the width and vagueness of the definition of harassment gave rise to a risk of incompatibility with both freedom of speech and freedom of thought, conscience and religion.[fn]

fn: High Court of Justice in Northern Ireland, Queen's Bench Division, (2007) NIQB 66, paras. 40-43.

## V. CONCLUSIONS AND RECOMMENDATIONS

### Balancing of competing rights

72. Concerning the issue of balancing competing rights, the Special Rapporteur would like to emphasize that there exists no hierarchy of discrimination grounds. She welcomes the fact that the mandate of the recently established Commission for Equality and Human Rights includes promoting understanding and encouraging good practices concerning relations between members of groups who share a common attribute in respect of age, disability, gender, race, religion or belief and sexual orientation. The approach taken by the pertinent anti-discrimination legislation seems to be quite balanced and there are specific exemptions or transitional provisions for organizations relating to religion and belief. Ultimately, balancing different competing rights can only be decided on a case-by-case basis taking into account the particular circumstances and implications of the case.

### **Report of the Special Rapporteur on freedom of religion or belief, A/HRC/6/5, 20 July 2007**

**Keywords:** multiple discrimination, religion

## II. OVERVIEW OF THE MANDATE'S ISSUES OF CONCERN

### C. Vulnerable groups

#### 1. Women

28. Women are in a particularly vulnerable situation as evidenced by numerous urgent appeals and allegation letters sent by various Special Rapporteurs. Since intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims, many women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities. A comprehensive thematic study by the second mandate holder (E/CN.4/2002/73/Add.2) lists the different types of discrimination against women, such as practices that are harmful to the health of women, discrimination against women within the family, attacks on the right to life, honour killings, and attacks on their dignity, such as restrictions on the education of women or their exclusion from certain functions. Furthermore, this study reveals that there are many cultural practices to be found among peoples having many diverse religious traditions. While many religions have combated cultural practices which undermine the status of women, some harmful practices such as female genital mutilation are perpetuated in the name of religion or imputed to religion. The Special Rapporteur would like to reiterate the importance of ensuring that the right to freedom of religion or belief adds to the values of human rights and does not unintentionally become an instrument for undermining freedoms. Women all too often are required to negotiate with male religious leaders and with other members of their own communities in order to exercise their full human rights. Women themselves have to be empowered since they continue to be largely excluded from the decision-making process within most religious communities. Similarly, at a time when much emphasis is put on inter-religious dialogue, the absence of women's voices from that dialogue is striking.

### **Report of the Special Rapporteur on freedom of religion, Summary of cases transmitted to Governments and replies received, A/HRC/4/21/Add.1, 8 March 2007**

**Keywords:** discrimination

152. The Special Rapporteurs brought to the attention of the Government information they had received relating to a questionnaire introduced in the state of Baden-Württemberg. The questionnaire is to be answered by citizens of the 57 member states of the Organization of the

Islamic Conference (OIC) who apply for German citizenship. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a 30-question questionnaire, concerning a number of issues including attitudes to equality between men and women, homosexuality and freedom of religion.

153. The Special Rapporteurs were concerned that an obligation imposed only on the citizens of the 57 OIC member states could be discriminatory, especially considering the large Turkish community living in Germany. It was further reported that under the new legislation, those who pass the test can have their citizenship revoked if they are found guilty of acting in conflict with their responses to the questions.

## F. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

<http://www2.ohchr.org/english/issues/migration/rapporteur/index.htm>

### **Report of the Special Rapporteur on the human rights of migrants, United States of America, A/HRC/7/12/Add.2, 5 March 2008**

**Keywords:** discrimination

#### Introduction

8. Migrant rights issues raised in these various meetings included, but were not limited to, the following: indefinite detention; arbitrary detention; mandatory detention; deportation without due process; family separation; anti-immigrant legislation; racial profiling; linguistic, racial, ethnic, gender and sexual-orientation discrimination; State violence; wage theft; forced labour; limited access to health and education; the growing anti-immigrant climate (including the post-9/11 backlash); and significant limitations on due process and judicial oversight. Most of these issues are addressed in this report.

### **Report of the Special Rapporteur on the human rights of migrants, Spain, A/HRC/4/24, 14 February 2007**

**Keywords:** partnership benefits

#### *II. CASE STUDIES AND RESPONSES TO THE QUESTIONNAIRE ON THE IMPACT OF CERTAIN LAWS AND ADMINISTRATIVE MEASURES ON MIGRANTS*

##### *D. Conditions for admission/stay*

**Question:** *Please provide information regarding any existing requirements and conditions for marriages of non-nationals and/or of nationals with non-nationals as well as the possibility for withdrawing authorization to stay following separation; and conditions for reunification of children. Please indicate recent changes in such legislation.*

#### **Responses**

107. Spain specified that the same laws must apply for a marriage between nationals and a marriage between a national and a non-national, according to article 27 of the Civil Code. An exception is made for homosexual marriages in the case that the country of origin of one of the future spouses has no regulation yet on the matter. If both spouses are non-nationals, Spanish law or their national law should be applied.



**G. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION AND OPINION**

<http://www2.ohchr.org/english/issues/opinion/index.htm>

**Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Addendum: Summary of cases transmitted to Governments and replies received A/HRC/7/14/Add.1, 25 February 2008**

SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

**Republic of Moldova**

**Letter of allegations sent on 8 May 2007 jointly with the Special Representative of the Secretary-General on human rights defenders**

**Keywords:** freedom of assembly

529. The Special Rapporteur and the Special Representative brought to the attention of the Government the situation of the Information Center GenderDoc-M, a non-governmental organisation that defends the rights of sexual minorities in Moldova. The organisation was the subject of an allegation letter sent by the Special Representative to the Secretary-General for Human Rights Defenders on 23 May 2006.

530. According to the information received, on 11 April 2007, Chisinau City Council banned the Moldovan Pride parade, organised by Information Center GenderDoc-M, on the grounds that it could pose a public disorder threat, that it would promote sexual propaganda and that it would undermine Moldovan Christian values. The event was due to take place in Chisinau city between 27 and 29 April 2007 and was planned as part of the Council of Europe's "All Different, All Equal" campaign. In February 2007, the Supreme Court held that the City Council had acted illegally in banning the event in 2006. According to reports, the Parade was prohibited on two previous occasions. On 28 April 2006, the office of the General Mayor in Chisinau, Moldova rejected an application by the Information Center GenderDoc-M to hold a peaceful demonstration in Chisinau on 5 May 2006. The purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. The reported reasons for the rejection of the application were based on "the statements of religious organisations that they will organise protest actions if the demonstration organised by GenderDoc-M is allowed, and also based on letters of complaint from individuals living in Chisinau." 531. Furthermore, on 16 May 2005 the office of the General Mayor in Chisinau, Moldova reportedly rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It was also reported that in June 2005 this decision was overturned by the Court of Appeal in Moldova.

**Observations**

532. The Special Rapporteur regrets that he has not received a response to the above communication.

**Venezuela (Bolivarian Republic of)**

**Llamamiento urgente enviado el 20 de noviembre de 2007 con el Relator Especial sobre la independencia de magistrados y abogados y la Representante Especial del Secretario-General para los defensores de los derechos humanos**

**Keywords:** freedom of assembly, police, anti-discrimination legislation

727. Los titulares de mandato de procedimientos especiales enviaron un llamamiento urgente en relación con la reforma de la Constitución de la República Bolivariana de Venezuela, aprobada el 3 de noviembre de 2007 por la Asamblea Nacional de la República Bolivariana de Venezuela, y que sería sometida a referéndum a principio de diciembre del 2007. Por un lado, querían destacar que, dentro de la reforma propuesta, hay importantes avances para los derechos humanos como, por ejemplo, la extensión de la prohibición, contenida en el artículo 21 de la Constitución a la discriminación por razones de salud y de orientación sexual, así como el reconocimiento al valor de la diversidad de culturas, contenido en el artículo 100 de la Constitución. Por otro lado, se había recibido información sobre los cambios sugeridos y aprobados por la Asamblea Nacional en los artículos 337, 338 y 339 referidos al estado de excepción. Según las informaciones recibidas, la reforma aprobada por la Asamblea Nacional eliminaría la obligación de presentar el decreto que declare el estado de excepción ante la Sala Constitucional del Tribunal Supremo de Justicia para que se pronuncie sobre su constitucionalidad.

728. Se habrían suprimido los límites temporales que la Constitución vigente establece para los estados de excepción. Además, la reforma eliminaría la exigencia expresa de que el decreto que declare el estado de excepción cumpla con las garantías establecidas en el Pacto Internacional de Derechos Civiles y Políticos y en la Convención Americana sobre Derechos Humanos. Asimismo, durante un estado de excepción, podrían suspenderse algunas garantías consagradas en la Constitución vigente, en particular el acceso a la información. Si bien el nuevo texto incluye, en el listado de derechos humanos intangibles, al derecho a la defensa, a la integridad personal, a ser juzgado o juzgada por sus jueces naturales y a no ser condenado o condenada a penas que excedan los treinta años, así como la prohibición a la desaparición forzosa; no menciona en forma expresa, como así lo hace el texto vigente, el derecho a un debido proceso.

729. Asimismo, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre la remoción de los magistrados del Tribunal Supremo de Justicia (Artículo 265). Mientras la Constitución en vigor prevé que dichos magistrados pueden ser removidos por la Asamblea Nacional mediante una mayoría calificada de las dos terceras partes de sus integrantes, la reforma prevé que su remoción puede ser votada por solo la mayoría de los integrantes de la Asamblea Nacional. Esta disposición fragiliza la posición de los magistrado y vulnera su independencia respecto al poder legislativo. Según las informaciones recibidas, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre libertad de asociación, prohibiendo a las “asociaciones con fines políticos y que participen en el proceso electoral” recibir fondos provenientes de fuentes internacionales, tanto públicas como privadas. La definición de “asociaciones con fines políticos” podría dar lugar a incertidumbres legales que afectarían directamente a las asociaciones de defensa de los derechos humanos y otras organizaciones no-gubernamentales. De esta manera, se les impediría recibir fondos internacionales de los que, en muchos casos, dependen.

730. Los titulares de mandato expresaron su preocupación por la seguridad de los periodistas y los participantes en las manifestaciones que se suceden entre partidarios y opositores a la mencionada reforma constitucional. En este sentido, querían señalar a la atención de su Gobierno la información que hemos recibido sobre varios incidentes que han tenido lugar recientemente. Así, el 25 de octubre de 2007, Paulina Moreno, de la cadena pública Ávila televisión, habría resultado herida por un explosivo cuando cubría un foro en el Instituto Pedagógico de Caracas, y un camarógrafo del mismo medio habría sido agredido por opositores a la reforma. El 7 de noviembre de 2007, varios estudiantes habrían resultado heridos de bala por varios desconocidos armados en el campus de la Universidad Central de Venezuela, en Caracas, durante una manifestación de oposición a la reforma.

### **Respuesta del Gobierno enviada el 30 de noviembre de 2007**

731. El gobierno venezolano respondió a la comunicación arriba. El gobierno lamentó que, a su juicio, los titulares de mandato no respetaron las pautas de conducto al no darle al Estado venezolano la oportunidad de formular sus observaciones sobre las evaluaciones hechas.

### **Seguimiento de comunicaciones transmitidas previamente**

732. Por carta con fecha 30 de abril de 2007, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 8 de septiembre de 2004 en relación con el homicidio del Sr. Mauro del Valle Marcano Ramos. Las Fiscalías Séptima y Quincuagésima del Ministerio Público de la Circunscripción Judicial del Estado Monagas se encuentran a cargo de la causa. El 7 de julio de 2005, se solicitó orden de aprehensión en contra de 5 individuos cuyos nombres son conocidos por el Relator Especial. Se solicitó orden de aprehensión en contra de un sexto individuo el 26 de julio de 2005, en conformidad con el artículo 25 del Código Orgánico Procesal Penal. El 24 de julio de 2005, se llevó a cabo en la sede del Juzgado Segundo de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Estado Monagas, la Audiencia de Presentación de uno de los imputados, a quien el tribunal le decretó Medida de Privación Judicial Preventiva de Libertad. Por considerar que el individuo había aportado una serie de datos útiles para aclarar los hechos que se investigan, el 9 de diciembre de 2005 fueron decretadas Medidas Cautelares Sustitutivas de Libertad, de acuerdo a lo pautado en el artículo 256. El 30 de agosto de 2006, el Ministerio Público tuvo conocimiento que uno de los ciudadanos se encontraba detenido en Trinidad y Tobago. Se iniciaron las gestiones legales necesarias para hacer efectiva la deportación de lo mismo. En reuniones con autoridades de Trinidad y Tobago, se explicó la situación procesal pendiente de dicho individuo y la necesidad que el mismo respondiera ante el sistema de Justicia de Venezuela. Como el individuo se encontraba sometido a investigación de naturaleza penal en Trinidad y Tobago, resulta necesario esperar la determinación en dicho procedimiento para luego proceder a la deportación del mismo. Observaciones

733. El Relator Especial agradece al Gobierno por sus respuestas a las comunicaciones del 8 de septiembre de 2004, 1 de marzo de 2007 y 20 de noviembre de 2007. El Relator lamenta que no haya recibido respuesta a sua carta del 30 de mayo de 2007.

### **Report of the Special Rapporteur on the right to freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, A/HRC/4/27/Add.1, 26 March 2007**

**Keywords:** discrimination

#### **Turkey**

#### **Follow-up to previously transmitted communications**

680. By letter dated 20 February 2006, the Government of Turkey replied to the communication of 22 June 2005 concerning the case of Mr Mehmet Tarhan. The Government stated that the Military Court of the 5<sup>th</sup> Infantry Training Brigade Command convicted Mehmet Tarhan on the two insubordination charges and sentenced him to a total of 4 years imprisonment. This judgment was reversed by the Military Court of Appeals on 25 October 2005, on the ground that Mr Tarhan had stated in his defence that he was gay. It was decided that a medical examination was required in order to find out whether he was eligible for military service. The Military Court however decided that such examination would have amounted to discrimination based on sexual preference according to the jurisprudence of the European Court of Human Rights and that it would be inconsistent with law. Therefore, the Court ruled on the continuation of his 4 years' imprisonment.

## H. SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

<http://www2.ohchr.org/english/issues/judiciary/index.htm>

### Report of the special rapporteur on the independence of judges and lawyers, A/HRC/8/4, 13 May 2008

**Keywords:** discrimination

#### III. ACCESS TO JUSTICE

##### B. Content and scope of the right of access to justice

##### 6. Positive obligations of the State

23. The State should refrain from any action that hinders access to justice or makes it impossible for those working in the judicial system - judges, lawyers and prosecutors - to carry out their task.[fn1] Access to justice requires the establishment of a judicial system that guarantees rights, and of parallel measures such as mechanisms and programmes to facilitate free legal assistance, in both criminal and civil cases. [fn2] This positive aspect of the State's obligations, likewise firmly established in both the European[fn3] and the inter-American systems, [fn4] must be considered in relation to socio-economic factors and others such as age, sexual orientation, and people's physical and psychological condition, which have a major bearing on effective access to justice.

fn1: Esta dimensión negativa es la que aborda más específicamente la legislación británica. *Vid.*, M. Penfold Schoenborn, "The Access to justice Bill and Human Rights Act of 1998: Britain's legislative overhaul leaves the system scrambling to mend the safety net", *Buffalo Human Rights Law Review*, vol. 6, p. 201.

fn2: *Vid.* TEDH, *Airey c/Irlanda*, Sentencia del 9 de octubre de 1979.

fn3: Del razonamiento del Tribunal en ese asunto se deduce que el Estado no sólo tiene la obligación de abstenerse de interferir el ejercicio del derecho al acceso a la justicia, sino también la obligación de adoptar acciones positivas y remover los obstáculos materiales que impiden su ejercicio efectivo. TEDH, *Airey c/Irlanda*, Sentencia del 9 de octubre de 1979.

fn4: Corte Interamericana de derecho Humanos, *Opinión Consultiva OC-11/90, del 10 de agosto de 1998. Excepciones al agotamiento de los recursos internos*; Corte Interamericana de derecho Humanos, *Caso Fairen Garben y Solis Corrales*, ST de 15 de marzo de 1989, Serie C, núm. 6, párr. 93.

### Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, 18 January 2007

**Keywords:** discrimination

#### II. CLASSIFICATION OF THE SITUATIONS ADDRESSED BY THE SPECIAL RAPPORTEUR, 1994-2006

##### B. Standards and practices relevant to the rule of law, the smooth functioning of the judicial system and the right to a fair trial

21. There are many complex complaints about unequal access to justice. This problem particularly affects the most vulnerable groups (such as children and persons with mental

illnesses), those who are discriminated against or persecuted (for example, on grounds of their sex, sexual orientation, ethnic origin, or religious convictions or practices) and members of some social groups (for example, human rights defenders, environmentalists and campaigners seeking to protect natural resources). These same groups often lose out from a failure to enforce court decisions, particularly where economic, social and cultural rights are at issue. Both the lack of access to justice and the failure to enforce court decisions relating to economic, social and cultural rights are symptomatic of the relationship between key economic and social factors and the administration of justice.

23. As regards judges, it is often the case that aspects of the statutes governing the judiciary or legal safeguards on conditions of practice in fact impair judicial independence, one example being when judicial appointments are non-permanent and are within the direct gift of the head of State. Short of this extreme, practices involving discrimination on grounds such as political allegiance, religion, beliefs about human rights, sex, sexual orientation, physical disability or ethnic origin can leave judges in a precarious position, affecting their employment and promotion prospects.

**I. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN BELARUS**

**Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/4/16, 15 January 2007**

**Keywords:** freedom of association, freedom of assembly

On 23 November 2006, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Belarus expressed concern at the detention of seven activists who worked to promote the human rights of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus, and at the cancellation of the International LGBT Conference they had organized.

## **J. SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES**

<http://www2.ohchr.org/english/issues/women/rapporteur/index.htm>

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: 15 years of the United Nations Special Rapporteur on Violence against women, its causes and consequences (1994 – 2009) – A critical review, A/HRC/11/6/Add.5, 27 May 2009**

**Keywords:** sexual rights

### *III. KEY AREAS OF FOCUS*

#### A. Domestic violence

33. The mandate has applied international standards of equality and non-discrimination, in the context of marriage and the family, upholding the right to privacy, sexual health (including sexual orientation) and reproductive rights within the context of family. In doing so, the mandate has rejected conventional critiques judging interventions to address oppressive family forms as being anti-family. In applying rights holistically within the domain of the family, the SRVAW “intentionally [departed] from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates, or equate domestic violence with woman-battering”. The Secretary-General’s study on VAW reinforced the principle that protection from domestic violence must extend to a broad range of interpersonal relationships within the family.

98. The mandate holders have noted that all forms of gender-based violence are “often used as an instrument to control female sexual behaviour” in ways that cast women as male property or punish women who transgress the sexual norms. Through the country missions and the communications, the mandate holders have responded to retribution for women’s expressions of reproductive and non-reproductive sexual activity, as well as for expressions of heterosexual and non-heterosexual sexuality. The SRVAW has issued communications in respect to information received regarding detention of women in police stations on grounds of sexual orientation and the resulting risk of torture and sexual violence to them in custody, and in respect of arrest, detention and torture of transgendered persons; similarly, a communication was issued to express concern for the physical security and access to justice for a man who had undergone sex-change surgery. Many of the communications to governments by the mandate holders have been in relation to honour crimes committed by family members, or to the action/inaction of the State with regard to stoning, flogging or death by hanging of women for suspected premarital sex, for adultery, for failing to prove rape, and for acts deemed incompatible with chastity - in one case involving a minor raped by her brother, and another of a teenage girl with psychosocial disabilities.

100. The observations of the mandate have not been limited to violations alone, but have also endorsed rights, such as the inclusion of same-sex unions within the expanded definition of the family, and have reaffirmed reproductive and sexual rights. While calling attention to the Cairo language that “all human beings have a right to a safe and satisfying sex life”, Radhika Coomaraswamy has also noted that “gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights”.

117. Radhika Coomaraswamy has noted that responding to the challenge regarding sexuality is the last frontier of human rights. It has been argued that this challenge requires moving beyond condemning regulation of female sexuality through an exclusive focus in VAW on sexual wrongs, such as rape, child sexual abuse, sexual assault and sexual harassment. In this regard, it has been noted that “if we fail to pursue a more radical and affirmative strategy on matters related to sex we will fail to adequately address the sexual harms women continue to experience”. Further, Coomaraswamy has pointed out that a focus on sexual wrongs and regulation will only perpetuate sexual stereotypes, sexism and orthodoxies that reinforce the control over female sexuality - ideologies that underscore gender inequality. The need to shift beyond sexual wrongs to sexual rights has been explained as: “The ability to say ‘no’ to what one does not desire is hugely conditioned on the capacity to recognize, delight in, and respond to one’s desire to say ‘yes’, free of limiting stereotypes and with knowledge of the implications for one’s safety and contentment. Although sexual health is a part of reproductive rights, sexual rights are distinct from reproductive rights, “since many of the expressions of sexuality are non-reproductive” and include “the right of all persons to express their sexual orientation, with due regard for the well being and rights of others, without fear of persecution, denial of liberty or social interference”, and require further attention in the context of human rights. The scope of sexual rights is much broader than sexual health or reproductive rights, and is not specific to women alone. Thus it needs to be developed in terms of respect, protection and fulfillment within human rights law by more than one body or mechanism in the United Nations system, in order to move beyond its current violation-centered boundaries to fully challenge gender inequality. However, the SRVAW, in cooperation with the Special Rapporteur on the Right to Health, has a distinct role to play in this development given the causal link with the mandate.

**Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: communications to and from governments, A/HRC/11/6/Add.1, 26 May 2009.**

### *III. COMMUNICATIONS SENT AND GOVERNMENT REPLIES RECEIVED*

#### **Honduras**

##### **Letter of allegations/Communications sent**

**Keywords:** hate crimes, transgender/gender identity

177. El 23 de enero de 2009, la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y el Relator Especial sobre la situación de los defensores de los derechos humanos enviaron una carta de alegación al Gobierno de Honduras en relación con el asesinato de la Sra. C. N., defensora líder de los derechos de las personas transgénero en Honduras, los asesinatos de tres otras personas transgénero, la Sra. J. (P. R. Z.), la Sra. B. (A. E. V. M.) y la Sra. N. (C. A. R.), y otros recientes actos de agresión contra personas transgénero en Honduras.

178. Según las informaciones recibidas, la madrugada del 9 de enero de 2009, tres hombres desconocidos efectuaron varios disparos contra la Sra. C. N., activista por los derechos de las personas transgénero en Honduras, desde un automóvil azul en marcha en el Barrio Guaserique, Comayaguela, una ciudad colindante a Tegucigalpa. La Sra. N. recibió tres disparos en el pecho y uno en la cabeza, y murió a causa de las heridas.



179. El 20 de diciembre de 2008, cuatro agentes del cuerpo de policía golpearon a una trabajadora sexual y activista transgénero dedicada a la difusión de campañas de prevención del VIH/SIDA en el distrito del Palmira, Tegucigalpa. Los agentes intentaron robarla pero cuando se resistió, le asaltaron. Los agentes entonces le rotaron la cabeza contra una ventana y ella recibió cortes numerosos en su cara. Los agentes dijeron que estaban arrestando a la señora por romper la ventana para entrar a una propiedad privada. La llevaron a un centro médico local para tratar sus heridas. Después de que les dijo a los agentes que tiene SIDA, le insultaron. Luego le amenazaron: “si hablas, te dejaremos muerta en el monte.” Se le liberó sin cargos el día siguiente. 180. El 17 de diciembre de 2008, un agresor desconocido mató a Sra. N. (C. A. R.), una trabajadora sexual transgénero cuando le asestó catorce puñaladas.

181. El 21 de noviembre de 2008, otro agresor disparó a la señora B. (A. E. V. M.), otra trabajadora sexual transgénero, mientras se encontraba trabajando en el Obelisco, parque ubicado en la zona céntrica de Comayagüela.

182. El día 30 de octubre de 2008 un agresor, cuya identidad permanece desconocida, asesinó a la Sra. J. (P. R. Z.), también trabajadora sexual transgénero.

### **Observaciones**

183. La Relatoria Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, lamenta no haber recibido respuesta a su comunicación de 23 de enero de 2009 en el momento de finalización del presente informe y reitera su interés en recibir respuestas en relación con las alegaciones sometidas.

184. The Special Rapporteur regrets that the Government of Honduras did not reply to her communication of 23 January 2009, and reiterates her interest in receiving a response from the Government in regard to the allegations submitted.

## **India**

### **Response from the Government to an allegation letter sent in 2007 Allegation letter**

**Keywords:** transgender/gender identity, police, physical violence

239. On 03 December 2008, the Special Rapporteur on violence against women, its causes and consequences, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an allegation letter concerning the harassment, arrest and detention of five members of the NGO Sangama, an NGO working on issues related to the human rights of persons belonging to sexual minorities, especially hijras (male-to female transsexuals).

240. According to the information received, on 20 October 2008, M. M., D. F., K., S. B. and S. S. went to the Girinagar police station as they had received news about five hijras who had been arrested and detained, and allegedly beaten by members of the Girinagar police. As they tried to inquire about the detention of the hijras, the members of the Sangama crisis intervention team were assaulted and detained at the Girinagar police station, and later at the Banashankari police station. They were accused of offences punishable under Section 143 (unlawful assembly), (joining unlawful assembly ordered to be dispersed), 147 (rioting), and 353 (obstructing government officials in performing their duty) of the Indian Police Code. They were brought before a magistrate and placed in judicial custody later that evening. All five crisis team members were subsequently released on bail on 22 October 2008.

241. On the evening of the 20 October 2008, approximately 150 human rights activists and lawyers gathered in front of the Banashankati police station to peacefully protest against the arrest and detention of the Sangama crisis team members and to try and negotiate their release. Six delegates among the protesters were detained for about four hours at the police station and were subjected to physical and verbal abuse. Reportedly, members of the Banashankati police also attacked the peaceful protesters with sticks and subjected them to physical, verbal and sexual assault. Thirty-one human rights activists were placed into a small police van, and kept there for approximately seven hours.

**Report of the Special Rapporteur on violence against women, its causes and consequences Addendum: Communications to and from Governments A/HRC/4/34/Add.1, 19 March 2007**

**Keywords:** multiple discrimination, transgender/gender identity

C. Trends and Observations

3) Violence against women facing multiple and intersecting layers of discrimination

20. 33 out of 83 communications sent (40 per cent) concerned women facing multiple and intersecting layers of discrimination.

21. Women belonging to national, ethnic or religious minorities or lower social castes, indigenous women, and migrant women are strongly overrepresented among reported victims. The Special Rapporteur has also acted on cases of transgender persons, who identified themselves as women and were targeted due to this sex identity choice, as well as on a case of a lesbian woman, who was reportedly murdered because of her sexual orientation.

22. In this regard, the Special Rapporteur would like to draw attention to the Commission on Human Rights resolution 2005/41 on the Elimination on Violence against women in which the Commission calls on States to address the specific circumstances facing indigenous women and girls in relation to gender-based violence, especially sexual violence, arising from multiple, intersecting and aggravated forms of discrimination, including racism, paying particular attention to the structural causes of violence.

D. Communications sent and Government replies received

**Argentina**

**Letter of allegations/Communications sent**

**Keywords:** transgender/gender identity

28. El 16 de mayo de 2006, la Relatora Especial, juntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos de conformidad con las resoluciones, envió una carta de alegaciones al Gobierno en relación con la Asociación de Lucha por la Identidad Travestí Transsexual (ALITT), una organización que trabaja en defensa de los derechos de las personas travestís y transexuales en Argentina.

29. De acuerdo con la información recibida: el 16 de septiembre de 2003 la oficina de Inspección General de Justicia (IGJ) habría negado la solicitud de otorgamiento de la personería jurídica de la ALITT. En la carta de negación la IGJ habría basado su decisión en el artículo 33, segunda parte, inciso 1 del Código Civil, que requiere que los objetivos de las organizaciones civiles tengan el objeto de bien común. Según del IGJ, los propósitos de la

ALITT que incluyen la lucha para que el Estado y la sociedad acepten el travestismo como una identidad propia y la “construcción de una ciudadanía travestí - transexual” que ofrezca un marco valioso para el desarrollo de la convivencia, integrando así el patrimonio espiritual y cultural de la comunidad, no encuadraban en el concepto de “bien común”. Según la información recibida la ALITT habría apelado la decisión de la IGC en la Corte Suprema en Argentina y hasta la fecha no habría recibido una respuesta.

### **Respuesta del Gobierno**

36. El principal argumento que los órganos jurisdiccionales vertieron al denegar la personería jurídica consistió en entender que en la interpretación de la acepción 'bien común' no es suficiente que el objeto de la asociación sea lícito sino que también debe ser socialmente útil. El fin útil de la asociación no debe serlo sólo para sus integrantes sino que debe alcanzar a la comunidad toda. Al respecto, la IGJ y la Cámara expresaron que no comprenden cuál es el bien común para toda la sociedad que se sigue de aceptar a las personas travestís o transexuales como iguales, miembros de la misma comunidad humana; tan sólo observó un beneficio particular para los integrantes del grupo conformado por las personas que detentan esa condición

37. En este sentido, ambas instancias reprodujeron los argumentos dados en su momento por la Corte Suprema en el caso de la Comunidad Homosexual Argentina (CHA) (12/7/90, ED 138- 788). En este caso, la mayoría sostuvo que bien común "supone en primer lugar bienes que como tales satisfacen necesidades del hombre, perfeccionándolo y al mismo tiempo que son comunes, o sea susceptibles de ser obtenidos y participados por todos en forma solidaria. En este sentido bien común se contrapone a bien individual y aunque la idea es aplicable en forma análoga a todo bien común, remite principalmente al bien común general".

41. Conforme a lo expuesto, entendido el 'bien común' como las condiciones de la vida social que permiten a los integrantes de la sociedad alcanzar el mayor grado de desarrollo personal y la mayor vigencia de los valores democráticos, cabe concluir que el otorgamiento estatal de la personería jurídica a una asociación que tiene entre los propósitos de su estatuto los de luchar para que el Estado y la sociedad acepten el travestismo como una identidad propia a fin de fomentar prácticas ciudadanas más democráticas e inclusivas que tiendan a la eliminación de la discriminación de la que fueron objeto históricamente en virtud de su orientación sexual y apariencia física, generar espacios de reflexión, educación e investigación tendientes a la difusión de la cultura democrática antidiscriminatoria en la que su identidad se encuentre libre de apreciaciones negativas y consecuentemente no sea estigmatizada y condenada a la exclusión y contribuir a la eliminación de los estereotipos que vinculan el travestismo a la violencia y a la prostitución como única alternativa de vida, se ciñe perfectamente a dicha manera de interpretar bien común.

42. Más aun, el mismo concepto de 'bien común' público exige que el Estado apoye, promueva y facilite la creación de asociaciones que tienen como objetivo fundamental luchar por la no discriminación de grupos de ciudadanos históricamente excluidos de la arena social, política y económica, como es el caso de las minorías sexuales, en este caso más específicamente, travestís y transexuales.

45. De aquí podría interferirse el avasallamiento al derecho de asociación reconocido en la Constitución Argentina (art. 14) y en los instrumentos internacionales de derechos humanos que gozan de jerarquía constitucional. Sin embargo, más allá de la viabilidad o no de este argumento, corresponde poner de manifiesto la violación al principio de igualdad y no discriminación que genera el no otorgamiento de la personalidad jurídica a una asociación que tiene como objeto luchar por la eliminación de la discriminación por sexo y orientación sexual en la sociedad.

49. En este sentido, cabe dejar en claro que la denegación de personería jurídica en el caso pone en juego no tanto la violación al derecho a la libertad de asociación, reunión y participación como la violación al principio de no discriminación, ya que la razón de dicha denegación solo puede estar fundada en un ánimo discriminador en virtud de la orientación sexual de los miembros de la ALITT –como se dio también en el caso CHA mencionado.

## **Nepal**

### **Letter of allegations/Communications sent**

**Keywords:** police, transgender/gender identity

454. On 3 January 2005 at about 10 p.m., three metis were walking in the Thamel district, when four police from Durbar Marg police station reportedly saw them and shouted: “Metis! Kill them!” One meti was beaten with a baton on her back; one policeman pulled his gun and pointed it at her, threatening that “These hijras [local Nepali term for transgender persons] pollute the society and must be cleaned out.” The other two metis were also severely beaten. All three reportedly had bruises on various parts of their bodies.

471. Members of the Blue Diamond Society were subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 12 August 2004. The Blue Diamond Society is a NGO working with sexual minorities, lesbian, gay, bisexual and transgender (LGBT) persons on health issues, including outreach education and prevention of HIV/AIDS, and campaigns for non-discrimination against persons based on their sexual orientation in Nepal.

## **South Africa**

### **Letter of allegations/Communications sent**

**Keywords:** hate crimes

631. By letter dated on 28 February 2006, the Special Rapporteur on violence against women, its causes and consequences has sent a letter of allegation concerning the murder of Z.N., a 19- year old lesbian woman, outside her house in Khayelitsha, Cape Town.

632. According to information received, on 4 February 2006, Z.N. and a lesbian friend, age 17, were approached by a woman who taunted them about their sexual orientation, saying that they “wanted to get raped.” The woman gathered a group of about 20 young men and boys who then attacked the two women. Z.N. was beaten, stoned and stabbed to death. Her friend managed to escape. Fearing for her life, she is currently under the protection of a non-governmental organization.

633. The police have since identified and arrested six of the alleged perpetrators, aged 17-19 years. Reportedly, however, no official has publicly condemned the incident as a hate crime. The Special Rapporteur was informed that this case does not constitute an isolated incident and that lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths. Some parts of the population believe, for instance, that lesbian women would change their sexual orientation if they are raped by a man.

**Report of the Special Rapporteur on violence against women, its causes and consequences, Netherlands, A/HRC/4/34/Add.4, 7 February 2007**

**Keywords:** sexual rights, transgender/gender identity

*IV. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN AND STATE RESPONSE*

B. Violence against immigrant, refugee and asylum-seeking women

47. Although boys and men may also become targets, [fn] HRV (honour related violence) serves to ensure women's conformity with group norms and sustain control over their sexuality, as honour is seen to reside in the bodies of women.

fn: Men can become targets of HRV if they refuse to take part in the punishment of female family members or for being an accomplice to the dishonourable act. Experts in the Netherlands also tend to view homosexual or bisexual immigrant men suffering violence at the hands of homophobic family or community members through the prism of HRV. Defining honour as a general trait of certain groups and considering all related acts of violence as HRV conceals its particularities as a form of VAW.

C. Violence in the context of prostitution

66. There are about 20,000 women in prostitution in the Netherlands (8,000 in Amsterdam alone). An estimated two thirds of them are immigrant women from developing countries or Eastern Europe. In addition, there are smaller numbers of men and transgender persons in prostitution.

**Report of the Special Rapporteur on violence against women, its causes and consequences, Sweden, A/HRC/4/34/Add.3, 6 February 2007**

**Keywords:** asylum, sexual rights

*III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN IN SWEDEN*

C. Violence against women of immigrant, asylum-seeker or refugee background

34. While these types of vulnerabilities are generally not disputed and to some extent are also addressed by special legal provisions (see below), it is hotly debated whether cultural specificities contribute to the vulnerability of women with a foreign background. In this context, the phenomenon of "honour-related violence" has commanded much public attention, especially after the murder of Fadime Şahindal in January 2002. [fn] The term - widely used by Swedish policymakers, researchers and practitioners without being clearly defined (which is a problem) - is generally employed to describe cases in which women or girls are subjected to, or threatened with, violence because they are seen as defying their family's expectations of "honourable" social or sexual behaviour. Some also use the term to refer to cases concerning homosexual or bisexual boys and men suffering violence at the hands of homophobic family members. The Swedish National Police Board calculates that about 400 cases of honour-related violence come to the attention of the authorities every year.

fn: Fadime, who grew up in a Kurdish family of Turkish origin, refused to enter into a marriage arranged by her family and had a Swedish boyfriend. She publicly spoke out against patriarchal oppression in immigrant families and also addressed the Parliament in this context. In January 2002 her father shot and killed her in the family's home in Uppsala. He claimed to have committed the crime to restore the family's honour.

#### *IV. STATE AND CIVIL SOCIETY INITIATIVES WITH RESPECT TO VIOLENCE AGAINST WOMEN*

##### *B. Protection of women at risk of violence*

67. In March 2006, Sweden reformed its refugee legislation substantially, enhancing the protection of women coming to Sweden due to a well-founded fear of gender-related persecution. In the past, women who feared persecution solely on the basis of gender were not entitled to refugee status; they could only obtain a subsidiary protection status. The new legislation abolishes this two-tier system and expands the refugee definition to include women and men who have a well-founded fear of persecution in their country of origin because of their gender or sexual orientation.

#### *V. CONCLUSIONS AND RECOMMENDATIONS*

71. In view of the measures already taken and the remaining deficiencies, I would like to make the following recommendations:

(a) To the Government:

(ii) Address root causes of violence against women by:

- Strengthening efforts to address the perpetuation of unequal gender power relations in the private sphere, including through measures at the school and preschool levels, to foster the development of male and female identities that break with notions of inequality and use of force;

- Strengthening efforts, including those outlined in the National Action Plan to Combat Racism, Xenophobia, Homophobia and Discrimination, to protect persons belonging to ethnic or religious minorities from discrimination in the labour market, the justice sector and other key areas. Special measures should be considered to facilitate the equal participation of women and men with an immigrant, refugee or minority background in the educational system and the labour market. The Government should also strongly consider signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families

**K. SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

<http://www2.ohchr.org/english/issues/health/right/index.htm>

**Anti-Homosexuality Bill threatens fight against HIV in Uganda, warns UN expert on health**

GENEVA (22 January 2010) - The UN Special Rapporteur on health, Anand Grover, warned Friday that the Anti-Homosexuality Bill being considered by the Ugandan Parliament is “not only a violation of the fundamental human rights of Ugandans, but will also undermine efforts to achieve universal access to HIV prevention, treatment, care and support.”

“Lessons from the last 30 years of the HIV epidemic have shown us that recognition of the rights of people with different sexual identities is a necessary component for a successful HIV and health response,” stressed the UN expert. “In many countries where sex between men is not criminalized and where stigma and discrimination have been reduced, men who have sex with men are more likely to take up HIV prevention, care and support and treatment services.”

“I urge the Ugandan Parliament to build on its past successes in responding to HIV and to refrain from passing this Bill,” said Mr. Grover, while strongly supporting the President and other members of the Government in their attempts to prevent the initiative of some members of the Parliament that the bill becoming law. “Uganda is in the great danger of taking a step backwards – away from realizing human rights for its people and away from an effective, evidence and rights-based HIV response.”

The Special Rapporteur on health stressed that a number of UN human rights conventions ban discrimination on grounds of sexual identity or orientation, and laws that criminalize homosexual acts between consenting adults violate the right to privacy.

Homosexuality is already criminalized through Uganda’s existing penal code, but the proposed Bill will increase penalties for homosexual conduct and will criminalize many related activities, such as the ‘promotion of homosexuality.’ By including the publication and dissemination of materials, funding and sponsoring related activities, and any attempts to ‘promote or abet homosexuality,’ these provisions could affect the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity, which are crucial to addressing vulnerability to HIV.

The Bill also criminalizes failure to report any relevant offences. It therefore compels citizens – including health workers and civil society organizations active in HIV prevention and human rights– to report to the authorities anyone whom they suspect of being homosexual. Furthermore, the Bill would result in the punishment of ‘serial offenders’ and those who are living with HIV, with the death penalty.

Anand Grover was appointed as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health by the United Nations Human Rights Council, in June 2008. As Special Rapporteur, he is independent from any government or organization and serves in her individual capacity. Mr. Grover, a practicing lawyer in the Bombay High Court and the Supreme Court of India, is Director of the Lawyers Collective HIV/AIDS in India and serves as member of various renowned health boards.

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, 10 August 2009**

**Keywords:** discrimination, Yogyakarta Principles

*IV. Vulnerable groups and informed consent*

46. Certain groups deserve special consideration regarding the protection of informed consent as a result of vulnerabilities stemming from economic, social and cultural circumstances. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of and adapt to the specific needs of lesbian, gay, bisexual, transgender and intersex persons. Such elements of vulnerability significantly overlap and exacerbate inequalities; however, certain groups are addressed separately below for the purposes of this report.

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Sweden, A/HRC/4/28/Add.2, 28 February 2007**

**Keywords:** discrimination

*IV. THE REALIZATION OF THE RIGHT TO HEALTH AT THE NATIONAL LEVEL: SOME ISSUES OF PARTICULAR CONCERN*

A. Is appropriate health care accessible to all?

41. The Ombudsmen on disability, ethnic discrimination and sexual orientation are currently undertaking a study on the impact of discrimination on health. The Swedish National Institute of Public Health (SNIPH: Folkhälsoinstitut) is also charged with undertaking surveys on discrimination and health. Sweden's national human rights action plan (2006-2009) proposes governmental measures to combat discrimination on grounds of gender, ethnicity, religion or other belief, sexual orientation and disability, and its impact on access to, and quality of, health care. The Special Rapporteur welcomes these studies, surveys and proposals. He recommends that the Government take measures to combat inequalities in health status and access to care. These measures should focus not only on discrimination, but also on other closely-related obstacles, such as the costs of care which render health care inaccessible for some population groups.

B. Mental health

44. There is a high incidence of psychosocial disabilities among specific population groups, including homeless persons. [fn1] Up to a quarter of refugees and asylum-seekers are affected by post-traumatic stress disorder. [fn2] Refugees, asylum-seekers and homeless persons all reportedly have difficulty accessing mental health care. Among children and young people, suicide bulimia and anorexia are increasing. However, there are few mental health programmes focused on children and young persons. Discrimination and stigma have reportedly created a high incidence of psychosocial disabilities among lesbian, gay, bisexual and transgender persons. The Special Rapporteur was informed that psychosocial disabilities are the leading cause of ill-health among women in Sweden: violence and discrimination against women have contributed to this situation.

fn1: *Så Vill vi Had Den, Patient-, brukar- och anhörignätverkets krav på framtida vård, stöd och behandling inom psykiatriområdet*, 2006.

fn2: National Institute for Psychosocial Medicine, *Migration and Stress*, June 2004.



48. The Special Rapporteur welcomes the focus in the Public Health Objectives Bill on addressing the causes of psychosocial disabilities among the population, and urges the Government to ensure adequate funding for these measures. The Special Rapporteur urges the Government to ensure that it takes measures to address causes of psychosocial disabilities among vulnerable and marginalized groups, including children, [fn] adolescents, homeless persons, women, asylum-seekers, and lesbian, gay, bisexual and transgender persons.

fn: In 2005, the Committee on the Rights of the Child recommended that the Government of Sweden should “strengthen mental health programmes for children, both preventative and interventional” (CRC/C/15/Add.248, para. 32 (e)). The Special Rapporteur endorses this recommendation.

**L. SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

<http://www2.ohchr.org/english/issues/torture>

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39, 9 February 2010**

**Keywords:** multiple discrimination

*VII. Conclusions and recommendations*

75. Among detainees, certain groups are subject to double discrimination and vulnerability, including aliens and members of minorities, women, children, the elderly, the sick, persons with disabilities, drug addicts and gay, lesbian and transgender persons.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention A/HRC/13/39/Add.5, 5 February 2010**

**Keywords:** police, physical violence, discrimination

*III. Cruel, inhuman and degrading treatment and punishment*

B. Excessive use of force by law enforcement bodies

189. Upon my fact-finding missions I have received numerous worrying allegations of excessive use of force by police authorities outside of the context of detention. As stated above, this may amount to CIDT if it does not meet the test of proportionality.

193. Of particular concern are the reports of police brutality against vulnerable, disadvantaged groups and minorities. In Paraguay, I have received numerous allegations of excessive force by the police against members of indigenous communities and the military in dispersing demonstrations of campesino movements. The Committee against Torture has equally expressed its concern about reports of police brutality against vulnerable groups such as racial minorities, migrants and persons of different sexual orientation, which have not been adequately investigated.

D. Corporal punishment

2. Corporal punishment as a judicial sanction

216. Since assuming my mandate, I have sent several communications relating to corporal punishment to a certain number of countries. In fact, a review of these communications reveals that only a very limited number of countries seem to sustain this cruel and inhuman form of judicial sanctions. Another fact that can be observed from assessing my communications is, on the one hand, the incredible cruelty of some of the reported punishments, such as amputations of the right hand and the left foot or flogging with 5000 lashes. On the other, many of the offences sanctioned with corporal punishment involved acts related to sexuality, such as “un-Islamic sexual activities”, “illicit relations”, or adultery.

## E. Conditions of detention

231. Many detainees complained that they felt like they were treated worse than animals. Indeed, most human beings would not like their dogs or cats to be treated in the same way that many human beings are treated in detention. They usually belong to the most disadvantaged, discriminated and vulnerable groups in society, such as the poor, minorities, drug addicts or aliens. Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.

## V. Conclusions and recommendations

257. Among detainees, certain groups are subject to double discrimination and vulnerability, including aliens and members of minorities, women, children, the elderly, the sick, persons with disabilities, drug addicts, gays, lesbians and transgender persons.

## **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Uruguay, A/HRC/13/39/Add.2, 21 December 2009**

**Keywords:** detention, prison officials

Santiago Vázquez Prison (COMCAR), Montevideo

Visited on 26 March 2009

### General information

112. The Special Rapporteur was received by the Director of the prison, Comisario Inspector Jose L. Beledo Pérez, and his two deputies. In an open and cooperative manner the Director admitted that everybody knew that “our prisons are terrible”. The prison is the largest in the country and has a capacity of 1,600 detainees. At the time of the visit, 2,768 detainees were held in COMCAR. The major problem was thus overcrowding, as well as a lack of staff. Detainees were held according to classification: in Module 1 (484 detainees) transvestites, transsexuals, homosexuals, and former police and military officers were held. These groups were rejected by the general prison population and needed extra security. Module 2 was a security module with 586 detainees. In total, around 1,000 detainees were held under a security regime. Modules 3 and 4 were general modules. The management could not classify the detainees according to the crime or according to pretrial or convicted status due to a lack of resources. Thus, all kinds of detainees were held together in these modules. First offenders were held in Module 5, in order to separate them from the recidivists. However, some of them might have been detained in an INAU facility earlier. The majority of the detainees in Module 5 were between 18 and 29 years old. A new module consisted of the so-called “*barracas*”, with large dormitories for around 40 prisoners each. Detainees were transferred there for good behaviour. However, the prison administration had not been able to fill the module because of a lack of detainees with a suitable profile. The *barracas* had 228 places but there were only 130 to 140 detainees.

118. Within the prison, there were 32 conjugal cells available. The cells could be used upon request. Minor women were only allowed inside if they could prove they were married to the detainee. Homosexual visits were not allowed. The visits were limited to one hour and took place on Tuesdays and Thursdays during visiting hours, between 1 and 5 p.m. The Special Rapporteur noted during his visit that several makeshift tents were being set up on the patio during visiting hours. He was informed by one of the detainees that the tents were used as additional places for “conjugal visits”.

120. At the time of the visit, 484 persons were held in Module 1. The module was divided into two sectors, A and B. Sector A had two floors and sector B had three. On the first floor of sector A, former police officers and former members of the military were kept. On the second floor, there were common criminals. Sector B was reserved for homosexuals, transsexuals and sexual offenders, as well as a few former police officers. According to the prisoners, the food had improved, but was still of poor quality. Sometimes there was no water for one to three days. The module used to have punishment cells, which were not used as such any longer because of the severe overcrowding. The cells were open from 8 a.m. to 5.30 p.m. All cells were severely overcrowded, dirty and run down. There were toilets in every cell, but due to a lack of water they were often not usable.

**Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/64/215, 3 August 2009**

**Keywords:** detention

*III. Conditions of detention*

A. Detainees: out of sight, out of mind

40. Many people think that torture is primarily the fate of political and other “high-ranking” prisoners. In reality, most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society, including those belonging to the lowest classes, children, persons with disabilities and diseases, gays, lesbians, bisexuals, transgender persons, drug addicts, aliens and members of ethnic and religious minorities or indigenous communities.

61. Where resources for the fulfilment of basic needs are scarce, the establishment of hierarchies among human beings can instantly be observed. At the bottom are often people who are marginalized because of their age, social status, health condition or disabilities, gender, ethnic or religious origin, status as foreigners or sexual orientation or owing to a drug addiction.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Denmark, A/HRC/10/44/Add.2, 18 February 2009**

*I. LEGAL FRAMEWORK*

C. National level

13. Despite the absence of a specific provision, there have been moves by the Ministry of Justice and the legislature towards tightening the legal framework in relation to torture. However, instead of making torture a specific offence, as envisaged by article 4 of the Convention against Torture, the newly introduced section 157 A only refers to torture as aggravating circumstance in relation to existing crimes and increases the maximum penalties for such acts:

(2) A violation of this Act shall be considered to have been committed by torture if it was committed in the performance of Danish, foreign or international public service or duty by inflicting harm on the body or health of another or causing severe physical or mental pain or suffering to another

(3) Due to the subject’s political belief, gender, race, skin colour, national or ethnic origin, religious belief or sexual inclination.”

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/10/44/Add.4, 17 February 2009**

61. **Egypt**, Date: 28/03/08

**Allegations Transmitted**

**Keywords:** police, detention, decriminalization, physical violence, forensic examination

A. S. R., M. H. A., A. M. M., K. A. A. and A. H. A., who are the subjects of a criminal case before the Qasr al-Nil Court of Misdemeanors. On 24 October 2007, Mr. A. S. R. and Mr. M. H. A. were arrested during an altercation in Bab El-Louk in downtown Cairo. When Mr. R. explained to the arresting police officers that he was HIV-positive, both were taken directly to the Morality Police Department in Mugamma' al-Tahrir, where they were detained, and later interrogated by an officer named M. O. A. The officers allegedly slapped Mr. R. in the face and beat Mr. A. They forced them to sign statements, the contents of which they were not allowed to read. During the four days they were detained in Mugamma' al-Tahrir, the two men were handcuffed to an iron desk and left to sleep on the floor. They were denied food and water and were required to pay for them later. A forensic anal examination was performed on both men in order to establish whether they had engaged in anal sexual intercourse. On 20 January 2008, Mr. A. M. M. was arrested on the street, Mr. K. A. A. at his apartment on the following day, and Mr. A. H. A. on 3 February 2008 at an unknown location. On 19 February 2008, Mr. M. was beaten by a police guard. The police guard handcuffed his wrists to opposite poles of the bed and chained one of his ankles to the bed's end to prevent him from moving. Allegedly, Mr. M. had been punched repeatedly in the face, head and body by the same officer.

On or around 20 November 2007, Mr. M. M. M. and Mr. E. H. M. were arrested and held at the Appeals Jail in central Cairo, apparently in connection with the arrests of Mr. R. and Mr. A. Police arrested Mr. M. at his workplace. Both men were released on 26 February and 29 February, respectively, upon court orders as the maximum preventive detention period had expired. Another individual, Mr. G. M., was arrested on an unknown date and later released. It is alleged that all men were forcibly tested for HIV without their consent. Mr. E. H. M., Mr. M. M. M. and Mr. G. M. tested negative and charges against them were dropped. Mr. A. S. R., Mr. M. H. A., Mr. A. M. M., and Mr. K. A. A. tested positive and are being held at Abbasiyya Fevers Hospital. They were chained to their beds until 25 February 2008 when the Ministry of Health intervened. Mr. A. H. A. is at present detained at Tora Prison. Reportedly, the five detainees were indicted on 4 March 2008 on charges of "habitual practice of debauchery" under article 9 (c) of Law 10/1961. Mr. A. S. R. and Mr. M. H. A. continued to be detained and were indicted after the lapse of the maximum 90-day period of preventive detention for misdemeanours. Allegedly, the lead prosecutor indicated to a defense counsel that the men should not be permitted to roam the streets freely as the Government considers them to present a danger to public health. The first trial hearing scheduled for 12 March was postponed to 19 March in order to provide the defense more time to prepare. Their verdict is expected for 9 April. Concerns are expressed for the physical and mental integrity of the men. Further, it is alleged that the five above-mentioned individuals might have been discriminatorily arrested and detained and that their indictment might be solely connected to their reported HIV status.

**Government Response**

By letter dated 06/10/08, the Government informed that two individuals, Mr. A. S. R. and Mr. M. H. A. were involved in a street fight in a crowded area in the center of midtown Cairo. A

police officer near the scene of the fight intervened to separate the two men and to calm down the situation. Upon enquiring from the two men about the reasons for their altercation, Mr. H. claimed that Mr. R. had insisted upon him to resume their sexual relationship, something he did not wish to do in light of his knowledge that Mr. R. had contracted HIV/AIDS. The two individuals were taken to the police station in order to continue the investigation. Mr. R. confirmed that he was infected with HIV/AIDS which he believed to have contracted through homosexual intercourse with a number of individuals whom he named. According to procedure, the Public Prosecutor's Office (PPO) was notified and assumed the responsibility for further investigation into the case. The investigations indicated that the two individuals and the group they named habitually engage in male prostitution, and that one of them actually runs a brothel for male prostitution. Therefore, the Attorney General issued an order summoning the individuals named in the testimony of the two men and they were later charged with "habitual practices of debauchery". During the investigations, a number of them admitted to the charges pressed against them and confirmed that the others also participated with them in such practices. Once the PPO investigations were completed, charges were brought against the aforementioned individuals, their cases were referred to the courts which ruled against the defendants in two of the cases. The defendants in both cases appealed the verdict, one was rejected while a decision on the second has not yet been issued. It is worth mentioning that the court verdict assigned the convicted individuals infected with HIV/AIDS to designated health centers and not to regular prisons in order to ensure they receive the necessary medical treatment while serving their sentences. The verdicts against the individuals named as defendants in these cases were not related to their "sexuality" or due to their "sexual orientation". They were clearly based on violations of specific provisions of the Egyptian penal code, none of which explicitly or implicitly criminalizes homosexuality. The allegation that the defendants were tried simply for being HIV positive or for carrying the AIDS virus is also unfounded. As demonstrated above, the trial was for violating specific provisions of Egyptian law and not for health status of the defendants. The infected individuals were granted medical services throughout the process and continue to receive the necessary treatment while serving their sentences. All proceedings at every stage of this case were carried out under strict judicial supervision. More specifically, the investigations were done by an independent judicial authority. Moreover, the rights of the accused were fully respected and included, inter alia, their right to a fair hearing before a competent court, their right to present their defense and the right to legal representation throughout the investigations and the trial, and the right of appeal. Allegations of arbitrary detention and torture are also unsubstantiated as the entire process followed the designated legal course including the issuance of the required legal permits to summon the group based on a previously defined and criminalized act punishable by the law. The court rulings were based on articles of the Egyptian Penal Code. Allegations of inhuman treatment and torture are also groundless. Firstly, Egyptian law penalizes any mistreatment, including torture and inhuman practices, of individuals including detainees and prisoners. Furthermore, the PPO closely follows and investigates any claims of illegal practices by security personnel and/or any other executive body in Egypt. In case such claims prove to be substantiated, whoever commits such crimes is presented to court to be tried for his or her actions. The initial investigations of the PPO show that all of these claims were unsubstantiated and lacked concrete evidence needed to incriminate any offender of the law.

92. **Indonesia**, Date: 31/10/08

### **Allegations transmitted**

**Keywords:** hate crimes, police, physical violence

On 22 January 2007, Mr. H. and his partner were assaulted by approximately 16 civilians while they were at their home. On 23 January, they were taken to the Bandaraya Aceh Sector

Police at about 1:230 a.m., where they were severely beaten and sexually abused by police officers. When the investigation process was set in motion, the prosecutor treated the case as a minor offence. On 8 October 2008, the Bandaraya Aceh District Police summoned Mr. H. to give testimony at the Banda Aceh District Court. The trial against four police officers took place that same day. During the trial, the judge did not examine the perpetrated acts of torture but rather focused on the sexual orientation of Mr. H. He gave the impression that the accused should be allowed to beat and assault the victim on the grounds of his different sexual orientation. After Mr. H. gave his testimony, all of the accused accepted it without objection. The court sentenced the four defendants to three month imprisonment, six months probation and a fine of IDR 1.000 (0.1 USD) for “minor maltreatment”. Since the charge was a minor offense, the victim has no right to appeal. In its reasoning for the light punishment, the court stated that the police officers had committed a minor offence, had confessed their acts, both parties had forgiven each other and they were needed by their country.

### **Government Response**

By letter dated 15/12/08, the Government of Indonesia indicated that Mr. H., an NGO worker, was said to have a male lover who went by the name of Mr. F. On 22 January 2008, Mr. H and Mr. F were allegedly assaulted by about 16 civilians while they were at home together at the second floor of a coffee shop in Lamgalang Village, regency of Banda Aceh, allegedly having intercourse. At the time, it was said that the assault was a direct result of the disapproval felt in their community for their sexual misconduct which contravened the local laws, traditions and religious values. The police came and allegedly asked them to sign a letter addressed to the Lamgalang Head of the Village informing him that they would not repeat their homosexual actions in the future in that village. On 23 January 2007, the two were arrested by the Banda Raya Aceh Sector Police at approximately 1:30 a.m. and were taken to the local police station in Banda Aceh. The arrest was linked to their public disorder. Following their arrest, there were allegations that they had been mistreated while in police custody.

During his trial, Mr. H. was requested to give testimony before the Banda Aceh District Court on 8 October. As homosexuality is considered a crime in the legislation in Aceh, the judge advised him to “turn away” from this legal violation. Regarding the allegations of torture and mistreatment, it is illicit for authority figures to misuse their power to the detriment of detainees. As a result, four police officers were placed on trial, R. H, W. P, W. S. and A. They did not deny the accusation and later apologized to Mr. H. They were also sentenced them to three years’ imprisonment, with six months of probation and a fine of IDR 1.000.

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/7/3/Add.1, 19 February 2008**

74. **France**, Date: 27/07/07

#### **Allegations Transmitted**

**Keywords:** police, decriminalization

Hamid Balaei, âgé de 21 ans, d’origine iranienne. Il aurait fui l’Iran pour échapper aux poursuites liées à son orientation sexuelle un an et demi auparavant. Il aurait été arrêté par la police à Paris le 18 juillet 2007 et se trouverait en détention depuis lors. Sa déportation en Iran serait imminente. Des craintes ont été exprimées quant à l’intégrité physique et mentale

de M. Balaei, s'il était déporté en Iran. En Iran, l'homosexualité serait considérée un crime passible d'emprisonnement, de punitions corporelles et de la peine capitale.

80. **Honduras**, Date: 05/04/07

### **Allegations Transmitted**

**Keywords:** transgender/gender identity, gender expression

Sr. Donny Reyes, miembro de la asociación Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT). El 18 de marzo, hacia las 3 de la madrugada, el Sr. Donny Reyes salió de las oficinas de la asociación Arcoiris y mientras esperaba un taxi, seis agentes de policía en dos autos de patrulla se detuvieron junto a él y le pidieron que subiera a uno de los autos. Cuando Donny Reyes se negó, los agentes empezaron a golpearle y le insultaron diciendo "a estos maricones hay que desaparecerlos de aquí". El Sr. Donny Reyes fue trasladado a la comisaría de Comayagüela, donde lo encerraron en una celda con otros 57 hombres. Donny Reyes fue golpeado, desnudado y violado por cuatro detenidos, después de que un agente de policía gritara "miren, aquí les traigo a una princesita, ya saben lo que tienen que hacer". El Sr. Reyes fue dejado en libertad al día siguiente después de pagar un soborno de 200 lempiras. Tres días después el Sr. Donny Reyes denunció lo sucedido ante la fiscalía y desde entonces viene siendo objeto de intimidaciones por parte de la policía. Desde el 27 de marzo autos de patrulla se estacionan varias veces al día por periodos de cinco minutos frente a las oficinas de la asociación Arcoiris, en un aparente intento por presionarle para que abandone sus denuncias. Igualmente, se teme que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos del Sr. Reyes, en particular su trabajo por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero.

### **Government Response**

Por carta de fecha 13/06/07, el Gobierno informó que la Fiscalía General de la República sigue realizando investigaciones con relación al caso del Sr. Donny Reyes. Con el fin de esclarecer los hechos, la Secretaría de Seguridad procedió a la conformación de una Comisión Especial, creada mediante acuerdo ministerial N° 0525-07 de fecha 16 de abril de 2007. La Secretaría de Seguridad ha suspendido temporalmente a 10 oficiales de la Escala Básica de la Cuarta Estación Policial de la Jefatura Metropolitana N° 3, involucrados en el incidente con el Sr. Donny Reyes. Los 10 oficiales se encuentran concentrados temporalmente en el Comando de Operaciones Cobras para evitar que interfirieran en las acciones de investigación. El Gobierno informa de que el Sr. Reyes no es beneficiario de medidas cautelares y que no ha recibido ningún tipo de compensación a modo de indemnización, ya que para tal fin debe acudir a las instancias jurisdiccionales correspondientes.

165. **Nepal**, Date: 02/05/07

### **Allegations Transmitted**

**Keywords:** detention, police, physical violence

D. C., a 16-year-old from Tarahara VDC-8, and Ms. Sarita Choudhary, a 20-year-old from Pakali VDC-1. Both women belong to a low caste in the Sunsari district of Terai, where the Communist Party of Nepal (Maoist) is exercising delegated authority. On 9 April 2007, the couple filed an official complaint to the Nepal National Human Rights Commission in relation to harassment and threats of abduction from their families or Maoists in relation to their homosexual relationship. The couple is currently hiding. On 2 March 2007, the women



were abducted by Maoists from Pakali village when they were on their way to celebrate the annual Hindu Holi festival. They were taken into custody at the Maoist camp in Singiya village, Sunsari district, and intensively interrogated about their sexuality. They were told that their blood would be tested to determine whether they were lesbian. The women were released after ten hours on the condition that they return with staff from the Human Welfare Society to their parents. Staff of the Human Welfare Society was also summoned to the camp and subjected to part of the interrogation. D.C. was forcibly returned by her parents to her family home on several occasions, most recently on 22 March 2007. Her parents and her brother (who is a Maoist) informed the Maoists about their relationship in order to encourage them to discontinue their relationship and lifestyle. The two young women, who commenced living together in the beginning of 2006, have been hiding in different places since their respective families do not approve. In October 2006, Ms. Dukhani Choudhary and Ms. Sarita Choudhary were abducted and held in the Maoist camp in Lochani village in Morang District. At the camp, the Maoists called the couple derogatory names for homosexuals including “chakka” and “hijara” and ordered the girls to join the Maoist party and undergo the training for the Maoist militia. As the young women refused to join the Maoist party and carry weapons, they were beaten, verbally abused, and deprived of food almost everyday. After being detained for almost one month, they managed to escape from the camp and went into hiding.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nigeria, A/HRC/7/3/Add.4, 22 November 2007**

**Keywords:** decriminalization

*IV. CORPORAL PUNISHMENT, SHARIA PENAL CODE PUNISHMENTS, AND CAPITAL PUNISHMENT*

A. Corporal punishment

56. The Special Rapporteur notes that corporal punishment, such as caning, and including sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria. Moreover he notes that sharia-related provisions for adultery and sodomy discriminate against women and same-sex couples, respectively.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/4/33/Add.1, 20 March 2007**

154. **Nepal**, Date: 06/02/06

**Allegations transmitted**

**Keywords:** transgender/gender identity, police, threats, physical violence

Police harassment and beatings of persons who are men by birth but identify as women (known as metis in Nepal). Early in the morning on 7 December 2005, police from the Shore Khutte Station raided a hotel in the Thamel District of Kathmandu. The raid was a retaliatory measure against the hotel for refusing to provide a room free of charge to four policemen where they intended to have sexual relations with two metis. During the raid, eleven metis were arrested. Eight were held without charge for five days, before they were released. The other three were detained for six days. On 27 December 2005, a meti named S. was detained in Shore Khutte Police Station. She was not promptly informed of the reasons for her arrest

and detention, was not given access to a lawyer and also did not have adequate access to a toilet. On 28 December 2005 at about 1:30 am, police arrested another meti called S. and took her to Shore Khutte Police Station. Police at the station verbally abused her and commanded her to strip. When she refused, they stripped her forcibly of her clothes and touched her genitals while mocking her. They also threatened to cut her hair off as punishment for wearing women's clothes. She was released the next day. On 31 December 2005 at about 11 pm, police from Shore Khutte Police Station detained a meti in the Thamel District. One policeman beat her with a bamboo baton calling her derogatory names. She escaped, but her right hand is reportedly swollen and badly bruised. On 3 January 2005 at about 10 pm, three metis were walking in the Thamel District, when four police from Durbar Marg Police Station saw them and shouted: "Metis! Kill them!" One meti was beaten with a baton on her back; one policeman pulled his gun and pointed it at her, threatening that "These hijras [local Nepali term for transgender persons] pollute the society and must be cleaned out." The other two metis were also severely beaten. All three had bruises on various parts of their bodies.

317. **United Arab Emirates**, Date: 13/03/06

### **Allegations transmitted**

**Keywords:** decriminalization, police, physical violence, gender expression, forensic examination

Sultan Salem Sultan Bunawwas, Magid Muhammad Khalifa al-Mazru`I, Salih Muhammad Hussein Ahmad, Salah Yusif Hamza al-Asmakh, Shihab Muhammad Abdullah al-Mihirbi, Ahmad Muhammad Thani al-Mazru`I, Khalid Jamal Ali al-Manna`I, Abd al- Basit `Ubaid Mubarak, Nawwaf Hassan Sa`id al-Khamairi, Ahmad Rashid Abdullah al-Naqbi, Gum`a Khadim al-Muhairi and Ahmad Hamid Ali al-Marri. On 22 November 2005, police raided a villa in Ghantout and arrested twenty-six men. The police apparently acted in response to allegations that the men were carrying out homosexual acts and that some of the men were wearing women's clothing or make-up. During the raid, police punched, kicked and beat some of the men. A few days after their arrest, a government official alleged that the men would be subjected to male hormone injections, although this claim was later denied by another government spokesperson. The police beat the men while they were in custody with the aim of forcing them to confess to homosexual conduct. Some members of the group were subjected to invasive forensic examinations in an effort to prove their homosexuality. In a trial in February 2006, twelve of the twenty-six men, including almost all of those who had endured invasive examinations, were sentenced to six years of imprisonment on charges relating to homosexuality and obscenity under a Sharia-based law, while a thirteenth was sentenced to a lesser sentence. Their case is now pending appeal, which should take place on 14 March 2006. The other thirteen men arrested were acquitted. The law of the United Arab Emirates stipulates that a person can only be found guilty of homosexuality if four witnesses unanimously agree they saw the act or if the accused confesses. It is reported that no witnesses testified against the defendants and that there was no other indication that they had engaged in homosexual conduct. The alleged confessions, which were presented as evidence, were extracted under invasive forensic examinations which could amount to torture or ill-treatment.

## **M. SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS**

<http://www2.ohchr.org/english/issues/executions/index.htm>

### **Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Guatemala, A/HRC/11/2/Add.7, 4 May 2009**

**Keywords:** hate crimes, physical violence, death, transgender/gender identity

#### *IV. TYPES OF KILLINGS*

13. In his report, the Special Rapporteur indicated several particularly problematic types of killings that occur in Guatemala: social cleansing; lynching; femicide; attacks targeting people for being gay, lesbian, transgender or transsexual; [fn] attacks on human rights defenders; and violence against those in prisons. In addition, in the last few years a new form of violence has taken hold - attacks against conductors of public transit.

fn: Updated information on attacks in Guatemala against those perceived to be gay, lesbian, transgender or transsexual was not provided.

### **Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Summary of cases transmitted to Government and replies received, A/HRC/4/20/Add.1, 12 March 2007**

**Keywords:** hate crimes, transgender/gender identity, death, physical violence

#### **Guatemala**

Muerte de Juan Pablo Méndez Cartagena y Ataque contra Kevin Robles

#### **Violación alegada**

Muerte a consecuencia de ataque o asesinato por las fuerzas de la policía

#### **Persona objeto del llamamiento**

2 individuales (un menor atacado debido a su orientación sexual y un defensor de los derechos humanos)

#### **Carácter de la respuesta**

No respuesta Observaciones del Relator Especial El Relator Especial lamenta que el Gobierno de Guatemala no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

#### **Llamamiento urgente del 10 de febrero de 2006**

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido relativa al ataque armado a manos de la policía en contra de dos travestís profesionales del sexo, a saber Kevin Robles, alias Sulma, y Juan Pablo Méndez Cartagena, alias Paulina.

De acuerdo con la información recibida, en la madrugada del 17 de diciembre Sulma y Paulina se encontraban en la zona 1 de la ciudad de Guatemala, en la intersección entre la Cuarta Avenida y la Calle 11, cuando cuatro hombres en motocicleta, que según testigos llevaban uniformes de la policía, les ordenaron que se detuvieran, y

luego dispararon contra ellas. Paulina recibió dos disparos en la cabeza, y murió minutos después. Sulma recibió tres disparos, pero sobrevivió. Se encuentra en estado grave pero estable en el hospital. Habla con dificultad, pues, según los informes, una de las balas le destruyó todos los dientes superiores.

Sulma y Paulina colaboraban desde años con la Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), organización que trabaja para prevenir el VIH/sida y presta apoyo a lesbianas, gays, bisexuales y personas transgénero. Paulina había empezado a trabajar como empleada asalariada de OASIS en 2004, y desde entonces sólo había tenido que ganar dinero ocasionalmente como profesional del sexo. OASIS ha pedido protección especial para Sulma, ya que agentes de la policía están patrullando las calles cerca del lugar donde se produjeron los disparos, en un aparente esfuerzo para intimidar a los testigos. Informes indican que la Procuraduría de los Derechos Humanos transmitió dicha solicitud al Ministerio de Gobernación. Sin embargo, hasta la fecha no se ha tomado ninguna medida de seguridad a favor de Sulma. Sin implicar, de antemano, una conclusión sobre los hechos, requiero al Gobierno de su Excelencia que proteja con efecto inmediato a Sulma y que aparte de sus puestos a todos los agentes implicados en las amenazas y homicidios. Además, solicito al Gobierno que me informe sobre los progresos realizados en las investigaciones sobre el asesinato y el ataque en contra de Paulina y Sulma.

Es mi responsabilidad de acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos y reforzado por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En mi deber de informar sobre esos casos a la Comisión, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. Son exactos los hechos referidos? Si no, para que se refute esas denuncias? Favor de proporcionar los resultados de la diligencia producida, incluyendo autopsias efectuadas.
2. Si fue presentada una queja, cuales son las acciones proporcionadas en respuesta?
3. Por favor, proporcione los detalles así como los resultados, en caso que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relación a este caso.
4. Por favor, proporcione los detalles de cualquier diligencia que haya sido emprendida.
5. Por favor, indique si alguna compensación fue otorgado a la familia de Paulina y a Sulma.

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Guatemala, A/HRC/4/20/Add.2, 19 February 2007**

**Keywords:** physical violence, transgender/gender identity, death, hate crimes, multiple discrimination

**Summary**

Today, a number of violent phenomena afflict Guatemala, including social cleansing, the rapidly rising killing of women, lynching, the killing of persons for their sexual identity or orientation, the killing of human rights defenders, and prison violence. In some cases, the State bears direct responsibility. There is strong evidence that some acts of social cleansing executions of gang members, criminal suspects, and other “undesirables” - are committed by

police personnel. Killings by prison inmates have been facilitated by guards. In other cases, the State bears indirect responsibility. With a criminal justice system unable to achieve more than a single-digit conviction rate for murder, the State bears responsibility under human rights law for the many who have been murdered by private individuals.

## *II. LEGAL FRAMEWORK*

12. The scope of the State's responsibility under international law is, thus, much broader than the scope of the criminal offence of "extrajudicial execution" under Guatemala's criminal law. That criminal offence encompasses killings by agents of the State as well as killings by private persons with the authorization or acquiescence of agents of the State, but does not include murders for which impunity is conferred by Government inaction.<sup>7</sup> The concept of "extrajudicial execution" under international law does include such murders accompanied by impunity and addresses the responsibility of the State rather than of individual perpetrators. Thus, regardless of the extent to which State agents may be involved, the evidence shows that the State has responsibility under international human rights law for the widespread killings of gang members; gay, lesbian, transgender, and transsexual persons; human rights defenders; women; and prison inmates (see chapter III).

## *III. ANALYSIS OF THE KINDS OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS OCCURRING IN GUATEMALA*

### D. Impunity for attacks targeting people for being gay, lesbian, transgender, or transsexual

32. There has been impunity for murders motivated by hatred towards persons identifying as gay, lesbian, transgender, and transsexual. Credible information suggests that there were at least 35 such murders between 1996 and 2006.<sup>[fn]</sup> Given the lack of official statistics and the likely reticence if not ignorance of victims' family members, there is reason to believe that the actual numbers are significantly higher.

fn: Jorge López Sologastoa, *Guatemala: El Rostro de la Homofobia* (Organización de Apoyo a una Sexualidad Integral frente al SIDA, 2006).

33. In most cases, there is no credible information regarding the identity of the murderer. In the absence of effective investigations, it cannot be said with certainty that all of these killings have been motivated by the sexual identity of the victim, but the circumstances - e.g., the killers firing from a car in an area of Guatemala city known to be frequented by transgender sex workers - often suggest this to be the case. In those cases with witnesses, both government officials and private citizens have been implicated.

34. I spoke with one individual, Sulma, who was herself attacked and whose friend was killed. On 16 December 2005, around 11.30 p.m., Paulina and Sulma - both transgender persons - were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements on the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well meant advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission of Human Rights. While there is a case file concerning the lethal attack on Paulina and Sulma opened at the Prosecutor's Office, the proceedings had not made any progress at the time of my visit to Guatemala. Even before my visit, on 10 February 2006, I

had already sent a communication to the Government of Guatemala, seeking information on the investigations into this crime and the measures taken to protect Sulma. To date, I have not received a reply.

36. In practice, intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims. Many of the Special Rapporteur's communications and urgent appeals concern cases where women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities. Women in many countries appear to be victims of double or triple forms of aggravated discrimination, owing to serious restrictions in the areas of education and employment.

## **Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, 29 January 2007**

### *II. ACTIVITIES*

#### A. Communications

8. ...More than 145 persons were killed for exercising their freedom of opinion and expression, 4 were killed in the name of honour, 4 were killed for their sexual orientation and 19 of those killed were suspected terrorists.

#### B. Visits

10. During the course of 2006, I undertook two visits:

(a) **Guatemala.** I visited Guatemala from 21 to 25 August 2006 at the invitation of its Government and met with government officials and members of civil society. In Guatemala, over 5,000 people die violently each year. A degree of State responsibility derives from the involvement of its agents in some forms of violence and its ineffectual response to others. During my visit, I gathered evidence on the prevalence and causes of phenomena such as social cleansing, "femicide", lynching, killings motivated by sexual orientation or identity, the killing of human rights defenders and prison violence. Guatemala's choice is between a human rights-consistent approach based on a working system of criminal justice (and in line with the vision of the Peace Accords) or a brutal and repressive response, often advocated under the rubric of a *mano dura* (iron fist), to crack down on "undesirable" elements. My report is in document A/HRC/4/20/Add.2.

### *III. ISSUES OF PARTICULAR IMPORTANCE*

#### C. Imposing the death penalty only for the "most serious crimes"

40. ...In communications with Governments, the Special Rapporteur has addressed death sentences for offences and conduct including[fn1] adultery, [fn2] apostasy, [fn3] blasphemy, [fn4] bribery, [fn5] acts incompatible with chastity, [fn6] corruption, [fn7] drug possession, [fn8] drug trafficking, [fn9] drug-related offences, [fn10] economic offences, [fn11] expressing oneself, [fn12] holding an opinion, [fn13] homosexual acts, [fn14] matters of sexual orientation, [fn15]

fn1: This list is not comprehensive. In the earlier years, especially, the communications addenda to the reports of the Special Rapporteur often do not include the full text of communications, at times making the determination of the norms at issue difficult from today's vantage point.

fn2: E/CN.4/2006/53/Add.4, para. 35 (Nigeria); E/CN.4/2006/53/Add.2, para. 150 (Sudan); E/CN.4/2003/3, para. 60 (Nigeria and Sudan); E/CN.4/2000/3, para. 70.

- fn3: E/CN.4/2006/53/Add.2, para. 150 (Sudan).  
 fn4: E/CN.4/1994/7, para. 475 (Pakistan).  
 fn5: E/CN.4/1994/7, para. 209 (China).  
 fn6: E/CN.4/2006/53/Add.1, pp. 87-88 (Islamic Republic of Iran).  
 fn7: E/CN.4/1994/7, para. 209 (China).  
 fn8: E/CN.4/2005/7/Add.1, para. 721 (Thailand).  
 fn9: E/CN.4/1999/39/Add.1, para. 236 (Thailand); E/CN.4/2004/7/Add.1, paras. 524-525 (Singapore; *see also* E/CN.4/2004/7, para. 51).  
 fn10: A/51/457 (1996), para. 107.  
 fn11: E/CN.4/2002/74, para. 114; E/CN.4/2001/9, para. 83; A/51/457 (1996), para. 107.  
 fn12: E/CN.4/2006/53/Add.1, pp. 307-317 (Yemen).  
 fn13: E/CN.4/1998/68/Add.1, para. 227 (Iran); E/CN.4/2006/53/Add.1, pp. 307- 317 (Yemen).  
 fn14: E/CN.4/2002/74/Add.2, para. 546 (Somalia; *see also* E/CN.4/2002/74, para. 65); E/CN.4/2006/53/Add.2, para. 150 (Sudan); E/CN.4/2006/53/Add.1, pp. 108-110 (Islamic Republic of Iran).  
 fn15: E/CN.4/2000/3, para. 70.

51. With respect to particular offences, the Commission on Human Rights and the Human Rights Committee have determined that a wide range of specific offences fall outside the scope of the “most serious crimes” for which the death penalty may be imposed. [fn1] These include: abduction not resulting in death, [fn2] abetting suicide, [fn3] adultery, [fn4] apostasy, [fn5] corruption, [fn6] drug-related offences, [fn7] economic crimes, [fn8] the expression of conscience, [fn9] financial crimes, [fn10] embezzlement by officials, [fn11] evasion of military service, [fn12] homosexual acts, [fn13] illicit sex, [fn14] sexual relations between consenting adults, [fn15]

fn1: This kind of legal offence-specific legal analysis also takes place at the national level. For a number of papers working out the implications of the most serious crimes standard for particular offences, ranging from illegally raising capital to smuggling precious metals, within a single legal system *see The Road to the Abolition of the Death Penalty in China: Regarding the Abolition of the Non-Violent Crime at the Present Stage* (Press of Chinese People’s Public Security University of China, 2004).

- fn2: CCPR/CO/72/GTM, para. 17 (2001) (Guatemala).  
 fn3: A/50/40, para. 35 (1995) (Sri Lanka).  
 fn4: CCPR/C/79/Add.25, para. 8 (1993) (Islamic Republic of Iran).  
 fn5: CCPR/C/79/Add.85, para. 8 (1997) (Sudan).  
 fn6: CCPR/C/79/Add.25, para. 8 (1993) (Islamic Republic of Iran).  
 fn7: A/50/40, para. 35 (1995) (Sri Lanka); A/55/40, para. 13 (2000) (Kuwait).  
 fn8: CCPR/C/79/Add.1, para. 5 (1992) (Algeria); CCPR/C/79/Add.25, para. 8 (1993) (Islamic Republic of Iran).  
 fn9: CHR Res. 1999/61, para. 3(b) (28 April 1999); CHR Res. 2002/77, para. 4(c) (25 April 2002); CHR Res. 2005/59 (20 April 2005), para. 7(f).  
 fn10: CHR Res. 1999/61, para. 3(b) (28 April 1999); CHR Res. 2002/77, para. 4(c) (25 April 2002); CHR Res. 2005/59 (20 April 2005), para. 7(f).  
 fn11: CCPR/C/79/Add.85, para. 8 (1997) (Sudan).  
 fn12: CCPR/C/79/Add.84, para. 11 (1997) (Iraq).  
 fn13: CCPR/C/79/Add.85, para. 8 (1997) (Sudan).  
 fn14: CCPR/C/79/Add.85, para. 8 (1997) (Sudan).  
 fn15: CHR Res. 2002/77, para. 4(c) (25 April 2002); CHR Res. 2005/59 (20 April 2005), para. 7(f).

## N. SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION

<http://www2.ohchr.org/english/issues/education/rapporteur/index.htm>

### **Report of the special rapporteur on the right to education, Bosnia and Herzegovina, A/HRC/8/10/Add.4, 27 May 2008**

**Keywords:** anti-discrimination legislation

#### *II. GENERAL VIEW OF THE EDUCATION SYSTEM*

##### A. National legal framework

##### 3. Framework Law on Higher Education in Bosnia and Herzegovina

22. The Law states that access to higher education regulated by licensed higher education institutions in Bosnia and Herzegovina shall not be restricted, directly or indirectly, on any actual or presumed grounds such as gender, race, sexual orientation, physical or other impairment, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth, age or other status.

### **Report of the Special Rapporteur on the right to education, Addendum: Communications sent to and replies received from Governments, A/HRC/8/10/Add.1, 13 May 2008**

#### **Poland**

##### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression

79. On 21 June 2007, the Special Rapporteur sent a communication concerning information received that in March 2007, the deputy Minister of education, Mr. Miroslaw Orzechowski, allegedly stated in different occasions that Government was developing legislation to ban “promotion of homosexuality” in schools and all education facilities. According to this legislation, teachers, students and principals who violate its provisions could face dismissal, fines or prison terms. Moreover, health educators advocating safer sex practices for homosexuals would be banned from schools, as well as lesbian, gay and transgender (LGBT) organizations.

80. In addition, it was alleged that in a radio interview Mr. Orzechowski, stated that “homosexuals should not hold positions such as those of a teacher”. The next day he insisted that he was misquoted and said that “only those who propagate homosexuality would face consequences”. Previously, at a summit of European Union education Ministers in March 2007, Deputy Prime Minister and Minister of Education, Mr. Roman Giertych, allegedly affirmed that children are receiving “propaganda about homosexuality”, adding that this “must be limited so children will have the correct view of the family”.

81. According to the information received the legislative proposal was under “popular consultation”, which is a step of the legislative process. However, it has not been made public. It would have the support of the Prime Minister Mr. Jaroslaw Kaczynski and the President Mr. Lech Kaczynski.



82. The Special Rapporteur reiterated his concern already expressed in a communication sent on 27 June 2006, as well as in his report A/HRC/4/29/Add.1 presented to the Human Rights Council during its 4th session, regarding the dismissal of the Director of the National In-Service Training Centre, due to his involvement in the publication and dissemination of a Council of Europe's human rights handbook for young people. The Special Rapporteur was concerned that the legislation referred to above might be also an attempt to prevent the dissemination in Poland of educative information that promotes universal human rights, tolerance and respect for diversity. He was also preoccupied that it would prevent students of having access to sexual health information and that it would jeopardize polish educators' rights.

83. By letter dated 26 November 2007, the Government replied to the communication sent by the Special Rapporteur on 21 June 2007 concerning the preparation by the Polish Ministry of National Education of a draft Act aiming at the prevention to promote homosexuality in schools and on the ban of propagating the homosexuality as an ideology in Polish educational system. The Government informed that on 6 September 2007, the Managing Board of the Ministry of National Education decided on the discontinuation of further legislative process on the mentioned draft.

84. The Special Rapporteur thanks the Government for its reply and is pleased to note that the draft legislation has been discontinued.

**Report of the Special Rapporteur on the right to education, Summary of communications sent to and replies received from Governments and other actors, A/HRC/4/29/Add.1, March 15, 2007**

**Poland**

**Communications received**

**Keywords:** discrimination

33. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006.

34. The Government stated that the National In-Service Teacher Training Centre –(NITTC) is responsible for the teacher training at all levels in Poland and accordingly all documents published by the NITTC should be consistent with the contents of the national curricula. The current curriculum was introduced by the Regulation of the Minister of National Education and Sport of 26 February 2002.

35. It was noted that Compass – ‘a manual on human rights education for young people’, contains chapters related to sexuality, homophobia and sexual orientation. The Government indicated that the contents of the manual were not suitable as a teaching aid and that it was contradictory to the general education curriculum of Poland which conforms with the Constitution of Poland, which protects marriage, defined as a ‘union of a man and a woman’. It was also noted that the English translation of the document differs from the Polish document and that a number of links to Polish gay websites are included in the document.

36. The Government concluded that Mr Sielatycki was responsible for teacher training within the national curriculum and that as Deputy Chairman of the National Committee for the European Year of Citizenship through Education, Mr Sielatycki was in a position to suggest to the Committee that the manual be published without the involvement of the NITTC. Mr Sielatycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

**Observations**

37. The Special Rapporteur thanks the Government for its response. However, he remains concerned over the situation of Mr. Sielatycki. In spite of the fact that his dismissal has been decided according to internal legislation, it appears that it does not comply with Poland's international obligations. Indeed, the inclusion of the Manual on Human Rights Education with Young People into the national curriculum was compatible with the goals pursued by the international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights, that Poland ratified in 1977. The Special Rapporteur urges the Government to reconsider its decision on the matter.

**O. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING**

<http://www2.ohchr.org/english/issues/housing/index.htm>

**Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, United States, A/HRC/13/20/Add.4, 12 February 2010**

**Keywords:** discrimination

*IV. Discrimination*

D. Discrimination based on economic and other status

75. The Special Rapporteur also welcomes HUD's (Department of Housing and Urban Development) initiative to examine the extent that lesbians, gay men, bisexual and transgender people experience discrimination when renting or owning their homes.

**Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Addendum: Summary of Communication sent and replies received by Governments and other actors, A/HRC/10/7/Add.1, 17 February 2009**

**Keywords:** anti-discrimination legislation

**Greece**

*II. SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED*

B. Facts regarding alleged pattern of forced evictions of Roma in Greece

50. In any case, as regards the implied alleged systematic infringement of the right to adequate housing and the existence of discriminatory acts or even failure to act due to discrimination, we would like to emphasize the following:

(f) With regard to police behavior, it is to be noted that standard orders from the Hellenic Police Headquarters to all regional police departments are for absolute respect of one's personality and their human rights and of equal treatment of all regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation. Those orders are based on article 4 of the Greek Constitution, they are within the framework of Law 3303/2005 on "equal treatment regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation" and article 5§3,4 of the Presidential Degree 254/2004 on "Policemen Professional Ethics Code."

**Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Canada, A/HRC/10/7/Add.3, 17 February 2009**

**Keywords:** discrimination

#### *IV. CONCERNS RELATED TO ADEQUATE HOUSING*

##### *C. Discrimination*

50. Despite the legal prohibition of discrimination with respect to housing, investigations into social and private housing in Canada reveal the persistence of discrimination against some groups, including on the basis of race, country of origin, sex, age, marital status, family status, sexual orientation, disability and social condition (including poverty and reliance on social assistance).[fn]

fn: CMHC, State of Knowledge on Housing Discrimination, Socio-economic Series 104, May 2002, <http://www.cmhc-schl.gc.ca/odpub/pdf/62781.pdf>.

**Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/7/16, 13 February 2008**

**Keywords:** multiple discrimination

#### *III. THE REALIZATION OF THE RIGHT TO ADEQUATE HOUSING FOR SPECIFIC GROUPS*

##### *A. Women and adequate housing*

39. There is an urgent need to address multiple forms of discrimination that women face on grounds including race, class, ethnicity, caste, health status, disability, income, sexual orientation, and other factors. An intersectional approach to gender discrimination is essential to address the multiple forms of discrimination faced by women. [fn] Other categories of women may face further discrimination due to their status, including women affected by domestic violence, women in rural and remote areas, women affected by HIV/AIDS, pregnant women, women with newborn children, and single women, including single mothers.

fn: Study by the Special Rapporteur on Women and adequate housing, E/CN.4/2005/43.

**Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Australia, A/HRC/4/18/Add.2, 11 May 2007**

**Keywords:** discrimination

#### *III. THE RIGHT TO ADEQUATE HOUSING OF SPECIFIC GROUPS*

##### *G. Other groups*

125. Other vulnerable groups were identified throughout the visit of the Special Rapporteur, including the elderly, persons with complex needs (e.g. HIV/AIDS, sexual minorities), single parents, migrants and peoples with low incomes. All these groups need specific adequate housing solutions and a right-based approach to efficiently address their situations.

**P. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS WHILE COUNTERING TERRORISM**

<http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>

**Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, 3 August 2009**

**Keywords:** Yogyakarta Principles, multiple discrimination, transgender/gender identity, threats, physical violence

*III. A gender perspective on countering terrorism*

B. Gender, equality and non-discrimination in international human rights law

20. Gender is not synonymous with women but rather encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity,[fn1] are defined and understood. [fn2] This report will therefore identify the gendered impact of counter-terrorism measures both on women and men, as well as the rights of persons of diverse sexual orientations and gender identities. As a social construct, gender is also informed by, and intersects with, various other means by which roles, functions and responsibilities are perceived and practiced, such as race, ethnicity, culture, religion and class. Consequently, gender is not static; it is changeable over time and across contexts. [fn3] Understanding gender as a social and shifting construct rather than as a biological and fixed category is important because it helps to identify the complex and inter-related gender-based human rights violations caused by counterterrorism measures; to understand the underlying causes of these violations; and to design strategies for countering terrorism that are truly non-discriminatory and inclusive of all actors.

fn1: See HCR/GIP/02/01.

fn2: A/59/38 (Supp.), annex I.

fn3: See *Gender Mainstreaming: Strategy for Promoting Gender Equality* (Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, August 2001).

21. International human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, requires States to ensure non-discrimination and equality (de jure and de facto) on the basis of gender, sex, sexual orientation and gender identity, [fn1] as well as to address instances where gender inequality intersects with other prohibited grounds of discrimination, such as race, colour and religion. [fn2] These guarantees of non-discrimination and gender equality are particularly integral to ensuring the enjoyment of economic, social and cultural rights, [fn3] which are often adversely impacted by counter-terrorism measures. [fn4] In the light of the extent to which counter-terrorism measures curtail the claims of asylum-seekers, it is also important to note that international refugee law provides protection against gender-related persecution, including through refugee claims relating to sexual orientation and gender identity, within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. [fn5]

fn1: See Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex I, arts. 2 and 3); International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI), annex I, arts. 2 and 3);

International Covenant on Civil and Political Rights (A/63/16); Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 32

(E/C.12/GC/20) (noting that “Other status” as recognized in article 2, paragraph 2, includes sexual orientation and that gender identity is recognized as among the prohibited grounds of discrimination); Organization of American States AG/RES/2504 (XXXIX-O/09); Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

fn2: See A/59/38 (Supp.), annex I, para. 12; E/C.12/2005/4; Committee on the Elimination of Racial Discrimination (A/55/18, annex V).

fn3: See E/C.12/GC/20, para. 2.

fn4: See A/HRC/6/17.

fn5: See UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (Office of the United Nations High Commissioner for Refugees (November 2008)); HRC/GIP/02/01.

### C. Gendered targeting and militarization

23. Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State’s counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity. This squeezing effect is present for example, in Algeria, where women have been arrested and detained as potential terrorists after they report sexual violence and humiliation by armed Islamists. [fn1] In Nepal, the counter-insurgency campaign that was defined with reference to terrorism was characterized by attacks on *meti* (effeminate males or transgender persons) by both sides, with reports that the Maoists were abducting *meti*[fn2] and the police were taking advantage of the counter-terrorism environment to attack *meti* as part of a “cleansing” of Nepali society. [fn3] A recent report by Amnesty International exemplifies the extent to which women may be targeted by all entities, noting that in Iraq, “crimes specifically aimed at women and girls, including rape, have been committed by members of Islamist armed groups, militias, Iraqi government forces, foreign soldiers within the US-led Multinational Force, and staff of foreign private military security contractors. Most of these crimes have been committed with impunity”. [fn4] The gender dimensions of these abuses are explicit: “Women and girls are being attacked in the street by men with different political agendas but who all want to impose veiling, gender segregation and discrimination”. [fn5] When States fail to prevent, investigate and punish gender-based violence by government actors or terrorist groups they embolden such attacks and legitimize gender inequality.

fn1: A/HRC/7/6/Add.2.

fn2: United Nations Children’s Fund, *Situation of Children and Women in Nepal* (Aug. 2007).

fn3: Human Rights Watch, *Nepal: Police Attack Transgender People* (17 April 2005); Human Rights Watch, *Nepal: “Sexual Cleansing” Drive Continues* (16 March 2006).

fn4: Amnesty International, *Trapped by Violence — Women in Iraq*, 3, AI Index MDE 14/005/2009 (March 2009).

fn5: *Ibid.*

### D. Gender and overly broad definitions of terrorism

27. The breadth of Governments’ counter-terrorism measures have resulted in significant gender-based human rights violations. In many instances, Governments have used vague and broad definitions of “terrorism” to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights. For example, Governments have alleged terrorism links to justify the arrest and persecution of “suspected ‘homosexuals’” [fn1] and regularly accuse women’s human rights defenders of being members of terrorist groups. [fn2] As well as being discriminatory, the

latter criminalizes activities that are protected by the guarantees of freedom of opinion, expression and association in the International Covenant on Civil and Political Rights<sup>[fn3]</sup> and exposes women’s human rights defenders to gender-specific forms of abuse and harassment at the hands of government. <sup>[fn4]</sup>

fn1: Women Living Under Muslim Laws, “Egypt: Trial of 52 men jailed because of their alleged sexual orientation continues” (23 October 2001).

fn2: Megan Cossey, “Female Asian Activists Feel Singled Out for Attack”, Women’s eNews (4 December 2006).

fn3: A/62/263 para. 66.

fn4: Megan Cossey, “Female Asian Activists Feel Singled Out for Attack”, Women’s eNews (4 December 2006).

#### M. Restrictive immigration controls, asylum procedures and trafficking

48. Counter-terrorism measures disproportionately affect women and transgender asylum-seekers, refugees and immigrants in specific ways. For example, enhanced immigration controls that focus attention on male bombers who may be dressing as females to avoid scrutiny<sup>[fn1]</sup> make transgender persons susceptible to increased harassment and suspicion. <sup>[fn2]</sup> Similarly, counter-terrorism measures that involve increased travel document security, <sup>[fn3]</sup> such as stricter procedures for issuing, changing and verifying identity documents, risk unduly penalizing transgender persons whose personal appearance and data are subject to change. <sup>[fn4]</sup> This jeopardizes the right of persons of diverse sexual orientations and gender identities to recognition before the law. In this regard, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity identify that States must “ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex ... reflect the person’s profound self-defined gender identity”. <sup>[fn5]</sup>

fn1: United States Department of Homeland Security, *DHS Advisory to Security Personnel, No Change in Threat Level* (4 September 2003).

fn2: See generally Sylvia Rivera Law Project, “The impact of the war on terror on LGBTSTQ communities”.

fn3: See A/62/263, para. 37.

fn4: See Sylvia Rivera Law Project, “The impact of the war on terror on LGBTSTQ communities”.

fn5: Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, principle 3.

### IV. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

52. In accordance with his mandate defined by the Human Rights Council, the Special Rapporteur has integrated a gender perspective throughout his work. This report expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism. Gender is not synonymous with women, but rather it encompasses the social constructions that underlie how women’s and men’s roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are defined and understood. While many of the dimensions of the theme of this report relate to the human rights of women, and violations thereof, gender-based violations of the human rights of male persons have also been addressed. Moreover, the human rights of lesbian, gay, bisexual, transgender and intersex individuals have required particular attention in the context of a human rights assessment of gender and counter-terrorism.

## B. Recommendations

53. The Special Rapporteur submits the following recommendations to Member States:

...

(b) To undertake all appropriate measures to investigate, document and monitor the gendered impacts of counter-terrorism measures on women and lesbian, gay, bisexual, transgender and intersex individuals, including in reporting to inter-governmental organizations;

(c) To end impunity for all direct and collateral gender-based human rights violations in the name of countering terrorism, including economic, social and cultural rights violations, and provide redress for victims, including through reparations schemes that are non-discriminatory and equality-enhancing and provide recognition for all forms of gendered harms, including for victims targeted on the basis of sexual orientation and gender identity;

...

(e) To ensure that counter-terrorism measures do not extend to target or impede activities that do not constitute terrorism, such as the exercise of the right to freedom of peaceful assembly and association by women's and lesbian, gay, bisexual, transgender and intersex human rights defenders;

...

(l) To take all necessary legislative, administrative and other measures to prevent, investigate and punish the use of torture and cruel, inhuman or degrading treatment or punishment in the name of countering terrorism, perpetrated on the basis of the sexual orientation or gender identity of the victim;

(m) To ensure that the rights of women and persons of diverse sexual orientations and gender identities are never used as a bartering tool to appease terrorist or extremist groups;



## **Q. INDEPENDENT EXPERT ON MINORITY ISSUES**

### **Report of the independent expert on minority issues, A/HRC/13/23, 7 January 2010**

#### *IV. Minorities and effective political participation: a survey of law and national practices*

##### D. Preconditions for and obstacles to effective political participation

56. Discrimination is a key cause of the widespread marginalization of minorities in societies worldwide. It is also an obstacle to the effective participation of minorities.

Discrimination can take different forms. Certain segments of minority populations are exposed to multiple forms of discrimination; in addition to being discriminated against on account of their belonging to a national or ethnic, religious or linguistic minority, they are discriminated against because of their gender, age, disability, sexual orientation or other grounds.

### **III. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: SPEECHES AND STATEMENTS**

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

#### **UN human rights chief urges Uganda to shelve “draconian” law on homosexuality, Geneva, Switzerland, 15 January 2010**

The UN High Commissioner for Human Rights Navi Pillay on Friday urged the Ugandan government to shelve a “draconian” draft bill on homosexuality that is due to be put before the Ugandan parliament later in January, saying it would bring the country into a direct collision with established international human rights standards aimed at preventing discrimination.

She welcomed recent statements by the President and other senior members of the Government, suggesting it might intervene to stop the private member’s bill from becoming law.

The so-called ‘Anti-Homosexuality Bill,’ tabled by one member of parliament but believed to be supported by a number of others, prohibits any form of sexual relations between people of the same sex, as well as the promotion or recognition of homosexual relations as a healthy or acceptable lifestyle in public institutions.

“The bill proposes draconian punishments for people alleged to be lesbian, gay, bisexual or transgendered – namely life imprisonment or, in some cases, the death penalty,” Pillay said. “It is extraordinary to find legislation like this being proposed more than 60 years after the adoption of the Universal Declaration of Human Rights – as well as many subsequent international laws and standards – made it clear this type of discrimination is unacceptable.”

The draft bill also includes a provision that could lead to a prison sentence of up to three years for anyone who fails to report within 24 hours the identities of any lesbian, gay, bisexual or transgendered individual they know – including members of their own family – or who overtly supports the human rights of lesbian, gay, bisexual or transgendered people.

The High Commissioner said the bill clearly breaches international human rights standards, as it is “blatantly discriminatory,” adding that, if passed, the bill would have “a tremendously negative impact on the enjoyment of a range of fundamental human rights by homosexuals, lesbians and transgendered individuals, as well as on parents, teachers, landlords, human rights defenders, medical professionals and HIV workers.”

“I would like to remind the Ugandan Government of the country’s obligations under international human rights law,” Pillay said. “Uganda is a party to the core human rights treaties and has generally had a good track record of cooperation with the various international human rights mechanisms. This bill threatens to seriously damage the country’s reputation in the international arena.” She noted that the African Charter on Human and Peoples’ Rights also contains strong language against discrimination.

The High Commissioner said she was “encouraged” by the fact that a number of Ugandan civil society organizations were actively opposing the bill, and by the recent statement by President Museveni, reported in the Ugandan press, which appeared to suggest the Government would intervene to prevent the draft bill from becoming law. “This is the only responsible course of action for a government to take in such circumstances,” she said.

She also urged the Government, once it has dealt with the current bill, to begin the process of repealing existing Ugandan laws that criminalize homosexuality, albeit with less severe punishments.

“To criminalize people on the basis of colour or gender is now unthinkable in most countries,” Pillay said. “The same should apply to an individual's sexual orientation. International human rights standards strongly suggest that the State should not dictate the nature of private consensual relations between adults.”

The High Commissioner said she was also concerned that, in Malawi, a gay couple who were engaged to be married were being prosecuted and had been denied bail by the court.

## **High Commissioner’s Strategic Management Plan, 10 January 2010**

### **Excerpts from SMP:**

#### **Countering discrimination, in particular racial discrimination, discrimination on the grounds of sex, religion and against others who are marginalized**

Equality before the law and freedom from discrimination are basic legal principles that underpin the protection of all human rights. The roots of most human rights abuses lie in severe violations of these principles. The Universal Declaration of Human Rights (UDHR) and the main international human rights treaties all contain clauses prohibiting discrimination and establishing state obligations to refrain from discriminatory policies and practices and to take steps to eradicate discrimination in both the public and private spheres.

While certain grounds for discrimination are the focus of specific treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, drawing directly on the language of the UDHR, extend protection to include discrimination on the basis of any “other status”, which treaty bodies have interpreted broadly.

#### **OHCHR’s role**

Almost every part of the Office is involved in anti-discrimination-related work ...

#### **Expected accomplishments and strategic directions**

International community, increasingly responsive to situations characterized by discrimination against individuals and groups

#### **Proposed activities:**

Organize regional expert seminars on incitement to discrimination, hostility or violence, as envisaged in the Durban Review Conference Outcome Document, and other seminars and panel discussions on a range of discrimination-related topics such as racial discrimination and discrimination based on religion, disability, sex and sexual orientation. (pp.22- 24)

#### **Human Rights Mainstreaming, Right to Development, Research and Analysis**

Fighting discrimination, in particular racial discrimination, discrimination on the grounds of sex, religion and against others who are marginalized will continue to be a primary area of focus of the Office’s work during the next biennium.

Particular attention will be given to other individuals and groups who are marginalized, and in this regard, the High Commissioner will undertake initiatives including in relation to discrimination based on religion, disability and sexual orientation. OHCHR will provide training and other forms of technical assistance to government bodies, national human rights institutions and civil society with the aim of increasing participation in decision-making by those affected by discrimination, and will support national initiatives. (p. 54)

## **REGIONAL OFFICES AND CENTRES**

### **Sub-regional Centre for Human Rights and Democracy in Central Africa (Yaoundé, Cameroon)**

Discrimination on the basis of ethnicity, nationality, social and political affiliations, gender, sexual orientation and health status, remains a concern. (p. 66)

### **Regional Office for Southern Africa (Pretoria, South Africa)**

The Office covers 14 countries, namely Angola, Botswana, Comoros, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia and Zimbabwe.

#### Thematic priorities

Countering discrimination, in particular racial discrimination, discrimination on the grounds of sex and sexual orientation. (p.68)

### **Regional Office for Europe (Brussels, Belgium)**

Key human rights concerns in the region include ... the remaining differences in law between same sex and heterosexual partnerships. (p. 113)

### **United Nations Assistance Mission for Iraq**

Incidents of discrimination, displacement, threats and murder on the grounds of religious beliefs, sexual orientation, or ethnic identity remain of concern.

#### Thematic priorities

Countering discrimination, in particular against ethnic and religious minorities, as well as on the basis of sexual orientation. (p. 123)

## **Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Follow-up to the World Conference on Human Rights: report of the United Nations High Commissioner for Human Rights, A/HRC/13/26, 15 December 2009**

### *VII. The High Commissioner's Strategic Management Plan 2010-2011*

56. In January 2010, OHCHR's third Strategic Management Plan (SMP), setting out the expected accomplishments and operational strategy for the 2010–2011 biennium, was launched. SMP is based on Programme 19 of the Secretary-General's Strategic Framework. Reviewed and approved every two years by the General Assembly, the Strategic Framework

establishes the goals and strategic priorities of the United Nations human rights programme, including OHCHR's mandated tasks, and forms the basis of its request for regular budget resources. Complementing this approach, the SMP presents synchronized planning, implementation, and evaluation processes, providing OHCHR with the detailed operational plan and the management tool required to translate the Strategic Framework into action. In November and December 2009, OHCHR provided briefings for Member States in Geneva and New York, and civil society organizations, on the 2010–2011 SMP.

57. In an effort to sharpen our operational focus, the SMP identifies six substantive human rights priorities, which encompass the work carried out at Headquarters and in the field. These are: (a) countering discrimination, in particular racial discrimination, discrimination on the grounds of sex and against others who are marginalized; (b) pursuing economic, social and cultural rights and combating inequalities and poverty, including in the context of the economic, food and climate crises; (c) ensuring the realization of human rights in the context of migration; (d) combating impunity and strengthening accountability, the rule of law, and democratic societies; (e) protecting human rights in situations of armed conflict, violence and insecurity; and (f) strengthening international human rights mechanisms and the progressive development of international human rights law. Detailed strategies have been developed in respect of each of these priorities, taking into account OHCHR's expertise, experience and capacity to add value to the work of the United Nations system as a whole.

### *VIII. Conclusion*

60. Looking forward to 2010, OHCHR will focus its attention on supporting the human rights mechanisms, in particular the Council as it begins to review its functioning. OHCHR will continue to draw strongly on its field presences in developing and implementing capacity-building tools for Member States, United Nations entities, civil society and other stakeholders. It will prioritize enhanced and coordinated follow-up to the recommendations of the universal periodic review, special procedures and treaty bodies, as well as greater coherence and coordination. Given the scale of discrimination worldwide, particularly against women, OHCHR will continue to strengthen its work to eliminate all forms of discrimination.

### **Address by the High Commissioner for Human Rights, Navi Pillay, Freedom Park, Pretoria, South Africa, 10 December 2009**

Excellencies,  
Ladies and Gentlemen,  
My Fellow South Africans,

I am delighted to be in Freedom Park today to celebrate the power of universal human rights. Indeed, it is befitting that this celebration takes place in South Africa where we know a thing or two about the denial of rights, discrimination and inequality. In this country we have relegated to the debris of history the abhorrent forms of discrimination perpetrated by the apartheid regime. And it was this country that hosted in Durban the 2001 World Conference against racism and racial discrimination. But discrimination is a diehard plague. It keeps affecting communities in South Africa and elsewhere. I wish more power to all of you, to all of us, to end it for good.

Humanity's long march in the fight against discrimination has never been easy. But this is a struggle that lies at the very heart of human rights advocacy. That is why the United Nations has devoted this year's Human Rights Day on December 10th to combat discrimination, inequality and intolerance and embrace diversity. Our task has acquired more urgency and

poignancy in our increasingly multi-ethnic and multi-cultural societies.

The truth is that no country is free of discrimination. As the Secretary-General of the United Nations noted, we see intolerance and exclusion in national histories that deny the identity of others, or that reject rightful grievances of minorities who might not share a so-called "official history." Let me echo his words and reiterate that discrimination can take many forms, old and new, covert or blatant, public or private.

It may appear as institutionalized racism, or ethnic strife, or manifest itself in episodes of intolerance and rejection that escape scrutiny. Its victims are individuals or groups that are most vulnerable to attacks all those that, due to their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, status, disabilities, and sexual orientation are perceived as different.

These people are frequently excluded from fully participating in the life of a community, from its economic, political, cultural, and social developments. New forms of xenophobia are on the rise, particularly against refugees and migrants. Attacks against non-nationals in South Africa and elsewhere are gravely alarming. In some countries the bigotry that stigmatizes, vilifies and excludes those who are perceived as outsiders is, at times, used for sinister political agendas.

We must counter this bigotry, and we have done so. The vision of human rights advocates, their sheer determination and energy paid off by raising awareness among the public and by producing a number of human rights treaties that give effect to anti-discrimination and equality provisions. These treaties create a protective web of obligations that States must fulfil. They restore the dignity previously denied to millions of women, men and children and concretely improve their lives. And the outcomes of the Durban world conference against racism and its review process are veritable roadmaps along which advances in the struggle against discrimination can be fostered and monitored.

I am pleased to announce my office's plan to support the work of the South African Human Rights Commission through a four-pronged project which will begin early next year. The project's aim is to help implementing the Durban process blueprint, to strengthen the capacity of the Commission and its legal services programs, to shore up its ability to counter racism and other forms of discrimination, as well as bolster its efforts to protect the rights of detainees.

Yes, progress has been remarkable, but we should not pause. Discrimination does not go away by itself. It must be challenged at every turn. We must move forward and move quickly. Let us make the Universal Declaration of Human Rights' principles of equality, freedom and dignity for all resonate everywhere. Universal tolerance and respect for diversity is our goal.

I invite all to join the United Nations and countless human rights advocates in the struggle against discrimination. Take the challenge to your communities, to your schools, to your workplace. Do so now. Thank you.

**Statement by the Deputy High Commissioner for Human Rights,  
Ms. Kyung-wha Kang to the Plenary Address "Inequity, Vulnerability and AIDS" at  
the 9th International Congress on AIDS in Asia and the Pacific, Bali, Indonesia, 11  
August 2009**

Excellencies,  
Distinguished delegates,  
Members of civil society,  
Ladies and gentlemen,

On behalf of the Office of the United Nations High Commissioner for Human Rights, I am very pleased and honored to have this opportunity to address the plenary of the 9th ICAAP on a theme that concisely captures the dynamics of the human rights deficits and abuses that fuel the HIV epidemic.

I would like to begin by paying tribute to the 25 million people who have died from AIDS and to those who have lost loved ones. These lives have been cut far too short by a pandemic that still challenges us.

I would also like to express our solidarity with the people who are currently living with the virus, or who are exposed to it, in large part because too many of our societies continue to discriminate against marginalized groups and relegate them to invisibility, and deprive those who belong to these groups the enjoyment of their fundamental human rights. With their suffering, they have exposed the shallowness of our commitment to equality and non-discrimination, the fundamental principles of the global human rights regime. And by forcing us to throw the light of human rights scrutiny upon the inequalities and prejudices that have kept minorities locked up at the margins of humanity's collective existence, they have compelled us to break through barriers and bring us a huge step closer to realizing the common standard of achievement that the Universal Declaration of Human Rights spelled out six decades ago - of all rights for all, for each and everyone of humanity.

Ladies and gentlemen,

That human rights is central to an effective HIV response was a theoretical concept not too long ago. Now, it has become a widely accepted premise supported by evidence. Indeed, HIV and AIDS have fed on poverty, inequalities and injustices. The tenaciousness of AIDS stems at least in part from the fact that measures to counter it underestimate and even ignore the human rights context in which it thrives. It is clear that marginalized groups whose human rights are slighted or abused are far more vulnerable to HIV infection and more likely to die from AIDS. To say that human rights are secondary in AIDS response is an irresponsible denial of reality.

A human rights-based approach to HIV brings to the fore the critical protection needs of those most vulnerable to HIV. It helps to devise and sharpen remedial action to reach those who have fallen outside the available safety nets of HIV prevention, treatment, care and support, due to neglect, intimidation, prejudice or social stigma. These include women and girls who experience sexual violence, young people who are denied sexuality education and information on HIV, and children who have been orphaned by AIDS. A rights-based approach also offers a protection canvas to people who are at the margins of society due to their sexual orientation or addiction to drugs, or who are held in prisons and other situations of detention and prevented from obtaining HIV services and commodities. This is because human rights are inalienable, and belong to everyone, including those belonging to stigmatized groups. This essential imperative must always be at the core of the HIV response.

In 2001, United Nations Member States agreed that "the realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV. Yet, as of the end of 2008, 63% of countries report laws that create barriers to HIV prevention, treatment, care and support for marginalized groups. As many as 59 countries still impose some form of restriction on the entry, stay and residence of people living with HIV. Such restrictions do not protect public health, but only serve to heighten stigma against people living with HIV. Many countries have adopted broad legislation that impose criminal penalties for people who

transmit HIV. There is no evidence that these penalties deter HIV transmission. Instead, they are likely to discourage people from HIV testing and disclosure of status.

A broad range of human rights and human rights principles are at stake in the HIV response. They include: non-discrimination, equal protection and equality before the law; right to information and equal access to education; right to the highest attainable standard of health; right to privacy and confidentiality; human rights of women and children, including the right to sexual and reproductive health; and right to liberty and security of the person.

Placing these human rights considerations at the center of HIV response means ensuring that: vulnerable and marginalized groups are the focus of the response; entrenched discrimination, stigma, and social exclusion are squarely addressed in programmatic responses; the human rights impact of policies and programmes are monitored; HIV positive people are active participants in the making of the decisions that affect them; People living with and affected by HIV are treated with dignity and respect that is inherent to all human beings; and HIV related human rights violations are redressed.

The examples are too many: mistreatment and exploitation of sex workers by law enforcement and health officials; the denial of treatment to prisoners; coercive, cruel and inhuman treatment, even torture of drug users; the denial of refugee status to HIV positive asylum seekers; the loss of jobs, entitlement to property and even her children for women due to her perceived or actual HIV status; persecution of sexual minorities.

The list of these human rights violations is endless, and they call for honest, transparent and self-critical coming to terms.

This is no easy challenge. There are competing demands on limited resources, and there remain many laws and policies – including in this vast region – not to mention prevailing social mores, which inhibit effective responses.

But that is why it is important that we maintain our commitment beyond the lifespan of this Congress:

We must continue to remind governments of their responsibilities under international human rights law – particularly their legal obligation not to discriminate;

We must continue to explain that human rights is not simply a means of berating those in power, but also a pragmatic tool to assist in ensuring the most effective use of our finite wealth, in such a way so as not to exclude certain groups;

We must continue to speak out – fairly and consistently – for those without a voice;

We must record, and intelligently and firmly address, specific instances in which human rights are violated.

We must extend our efforts to engage a broader array of partners

We must fulfill our right to health obligation by ensuring that HIV-related goods, services and facilities which includes access to antiretroviral treatment, are of good quality, are available, affordable and accessible to all without discrimination.

Finally, whether coming from government, the United Nations and broader the international community, or from civil society we must continue to tackle the silence, prejudices and misconceptions that persist at the centre of HIV.

Ladies and gentlemen,

I came to the Congress thinking that human rights would help the HIV and AIDS community, that human rights is instrumental to the endeavors of all in the AIDS response. And this has been more than validated in all the vibrant discussions unfolding in the halls of the Congress



arena. But I have also come to realize that the AIDS endeavors have greatly elevated and energized the human rights discourse, by expanding its horizons and bringing into bold relief the long road that is still ahead of us toward realizing tolerant and just societies where all rights are enjoyed by all in equality and non-discrimination. Indeed, this has been as much a Congress about human rights as it is about AIDS. I am grateful for the experience, and hope that the synergy will continue build beyond the Congress and in our daily endeavors.

Thank you.

**Address by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights on the theme of gender identity, sexual orientation and human rights, 11<sup>th</sup> Session Human Rights Council, Panel Event, 4 June 2009**

Excellencies,  
Distinguished Participants,  
Ladies and Gentlemen,

I am pleased that we have an opportunity to discuss in Geneva the principles on the theme of gender identity, sexual orientation and human rights which were enunciated in New York and in Paris in 2008 and 2009, respectively.

The statement in New York was endorsed by 66 States from all regions of the world reflecting different religious and cultural perspectives. The United States of America have now joined their ranks.

The message from New York and Paris was simple, yet momentous. It expressed concerns regarding human rights violations based on sexual orientation or gender identity. Signatory States were disturbed by the violence, harassment and discrimination suffered by victims. They condemned these violations which, in extreme forms, encompass executions, torture, cruel inhuman or degrading treatment, extra judicial killings, and arbitrary arrest and detention.

I wish to reiterate that I share their concerns.

Even the 57 States which issued an alternative statement acknowledged that no human being should face human rights violations on any ground. Those States affirmed that they:

“... strongly deplore all forms of stereotyping, exclusion, stigmatisation, prejudice, intolerance, discrimination and violence directed against people, communities and individuals on any ground whatsoever, wherever they occur.” Similarly, the Holy See expressed its concerns, but stated before the United Nations General Assembly that it continued “to advocate that every sign of unjust discrimination towards homosexual persons should be avoided, and urges States to do away with criminal penalties against them.”

I am encouraged by this growing awareness and emerging consensus that common ground can be found.

Distinguished Participants,

Dialogue on the theme at hand today and, more broadly, on the subject of discrimination against gays, lesbians and transgendered persons is frequently prefaced by the caveats that these matters are sensitive and that, legally speaking, they are not yet established as standards.

Indeed, the subject is sensitive: dealing with our own and societies' inherent prejudice is always sensitive. None of us, I am sure, has grown up in an environment that is one hundred percent free of intolerance and exclusion. Whether we like it or not, admit it or not, in various degrees ingrained prejudices shape our perceptions and actions.

And yet custom evolves everywhere. The prejudice and intolerance that had shaped racist attitudes and gender discrimination throughout history are now widely condemned. I venture to predict that diffident, derogatory, intolerant and violent approaches regarding sexual orientation and gender identity will also eventually be met with reprobation and penalty.

But it is incumbent upon all of us to actively counter prejudices and the specious rationalizations that cloak them. Both undermine the dignity and violate the rights of countless gay, lesbians and transgendered persons. They continue to shape law and custom in too many countries. Let me briefly illustrate how this happens.

At least ten countries maintain the death penalty for consensual same-sex practices. As a result, men, women and transgendered persons have been sentenced to death. Indeed the Special Rapporteur on extrajudicial executions has consistently drawn our attention to such cases.

In some countries corporal punishment exists for so the so called crime of homosexuality including in one case a sentence of 2,400 lashes.

Special procedures mandate holders, have consistently reported that LGBTI persons have been arbitrarily arrested and held in detention, that some have been tortured and even killed in order to obtain information regarding other LGBTI individuals. There are cases of women thought to be lesbian who had been raped ostensibly to "cure" their condition. The Special Rapporteur on human rights defenders has repeatedly illustrated the particular exposure to risk for those working to protect LGBTI individuals. The extent of impunity for these crimes is of enormous concern, as all too often prosecutions are the exception rather than the rule.

These are just a few of the real incidents reported to my Office and to Special Procedures mandate holders, a fraction of the reality of violence to which LGBTI persons are subjected every day and in every part of the world.

The Special Procedures mandate holders are increasingly ensuring consideration of these issues within their respective mandates, and indeed, have consistently identified that human rights violations based on sexual orientation or gender identity reflect a protection gap that needs to be closed.

Treaty Bodies provide us with the interpretation of human rights law. Their position over the years has become unequivocal. In 1994 the Human Rights Committee considered the case of *Toonan v Australia*. The committee concluded that the criminalisation of sexual acts between consenting adults was a breach of a right to privacy and that the right to be free from discrimination on grounds of sex included sexual orientation. Since then, the committee has developed and consolidated its own jurisprudence.

I will leave it for Micheal O Flaherty to tell us more as to the Committees' approach and thinking.

In addition to the position of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights has referred to discrimination against LGBTI persons in several concluding observations. Remarkably, that committee in its recent General Comment 20 on discrimination clearly placed sexual orientation within the prohibited grounds of discrimination. Under the analysis of Other Status, it stated and I quote:

“Other status” as recognized in article 2(2) includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realising Covenant rights.

In a similar vein, regional human rights bodies such as the Inter American Court and the European Court for Human Rights in Strasbourg have established that criminalisation of homosexuality violates human rights. They have also examined related issues, such as privacy rights in other contexts, and equal ages of consent with reference to discrimination. The interpretive guidelines issued by the High Commissioner for Refugees state that the well founded fear of persecution for “membership of social groups” includes lesbians and homosexual men. These guidelines have been followed in national courts.

Ladies and Gentlemen,

I wish to point out that the 2008 statement in New York was issued in the context of the 60th anniversary of the Universal Declaration of Human Rights. Let us recall that this fundamental document was a direct response to the horrors of World War II and the Holocaust. It was thus drafted at a time when the world had witnessed--in appalling intensity--the consequences of prejudice and the destruction it caused. The prejudice, intolerance and violence that cost the lives of six million Jews, also claimed the lives of thousands of Roma, of homosexuals, lesbians and transgendered persons in the concentration camps and in prisons. All were targets.

The aim of the drafters of the UDHR was to make sure that these atrocities were never repeated, and that prejudice would give way to the primacy of human rights.

I said this before and I state again that the UDHR is not just aspirational - it is customary law, with universal applicability. No human being, simply because of sexual orientation or gender identity, should be denied their human rights or be subject to discrimination, violence, criminal sanctions, or abuse.

Rooted in the UDHR and in human rights jurisprudence, the prohibition of discrimination on the grounds of sexual orientation and gender identity is not merely a matter of moral obligation.

It is our task and our challenge to move beyond a debate on *whether* all human beings have rights: this issue was settled 60 years ago. Rather, we should now concentrate our efforts on implementation of all human rights for all.

Excellencies,

I am proud that the 1996 Constitution of South Africa protects the rights of LGBTI individuals from discrimination. I am proud that my fellow jurists have identified privacy, dignity and equality as the triad of interdependent and inseparable values. My learned colleague Albie Sachs said, and I quote: “The development of an active rather than a purely formal sense of enjoying a common citizenship depends on recognising and accepting people as they are.... The invalidation of anti-sodomy laws will mark an important moment in the maturing of an open democracy based on dignity, freedom and equality.”

Those of us who have experienced and witnessed the consequences of prejudice and discrimination insist on the need to uphold the rights for all human beings at all times. We cannot and must not do less.

Justice and equality for all regardless of gender or sexual orientation.

## **Paris, World Congress on Human Rights, Sexual Orientation and Gender Identity, 15 May 2009**

In a strongly worded statement High Commissioner Navi Pillay has come out against discrimination directed at lesbian, gay, bisexual and transgender groups.

Rama Yade, France's Secretary of State for Human Rights under the Minister of Foreign and European Affairs, addresses delegates at the World Congress on human rights, sexual orientation and gender identity in Paris. Pillay was speaking in a pre-recorded message to delegates at an international Congress in Paris organised by the French Government. The Congress aims to build on the progress made late last year when the UN General Assembly heard a statement endorsed by more than 50 countries which called for an end to rights abuses based on sexual orientation and gender identity. While the statement was non binding, it was squarely based on and reaffirmed existing protections for human rights in international law. It was historic, in that it was the first time that the condemnation of human rights violations based on sexual orientation and gender identity was publically criticized by a large number of states, in the context of the General Assembly.

"The principles of universality and non-discrimination admit no exception," Pillay said. "The criminalization of different sexual orientation cannot be justified either as a matter of law or as a matter of morality."

In her address, Pillay acknowledged the concerns that are often expressed in discussions of sexual orientation and gender identity.

Frequently, fears are expressed for the sanctity of the family. "Those doubts and fears," she said, "can be readily addressed through a human rights approach, which upholds the principles of non-discrimination and respect for diversity."

Concerns too are often voiced that respect for the human rights of gays, lesbians, bisexual and transgender people might unwittingly shield pedophiles from justice. "Nothing limits the applicability of criminal law where actual harm occurs," she said, "as in the sexual abuse of children, irrespective of whether it is perpetrated by homosexuals or heterosexuals."

The World Congress on human rights, sexual orientation and gender identity is being held at the National Assembly in Paris. The Congress has been organised with the participation also of the Norwegian and Dutch governments and in the framework of the celebration of the International Day Against Homophobia and Transphobia on 17 May.

## **Joint Statement by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), 26 February 2008**

UNAIDS and OHCHR call for greater protection of the human rights of all persons regardless of sexual orientation or HIV status

Geneva, 26 February 2008 - The Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) are alarmed at recent reports of human rights violations committed against people on the basis of their sexual orientation and their actual or presumed HIV status.

"UNAIDS and OHCHR urge all governments to be vigilant in respecting and protecting the rights of individuals in this regard, in particular the rights of all to be free from murder, torture, violence, arbitrary arrest and vilification, regardless of their HIV status or sexual orientation."

Among specific concerns that have arisen in national responses to HIV are reports of forced HIV testing, arbitrary detention on the basis of HIV status and disclosure of an individual's HIV status without consent. Such punitive measures violate individuals' rights and make it more difficult to reach those in need of HIV prevention, treatment and care services. Where it exists, homophobia fuels the HIV epidemic, and must be addressed as a key part of national HIV responses.

Experience has shown that effective responses to HIV are those based on respect for human rights, tolerance, and unimpeded access to HIV prevention, treatment, care and support.

**Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights on the theme of gender identity, sexual orientation and human rights, 63<sup>rd</sup> session of the General Assembly, New York, 18 December 2008**

Excellencies,  
Ladies and Gentlemen,  
Dear friends,

I regret that I am unable to be with you in person today, but I am pleased that at least I can send myself via this medium to express my full support at this important and extremely timely event.

As we celebrate this month the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, it is timely to remember the spirit and intent behind that most vital of instruments which demands that all human beings have equal rights and prohibits, absolutely, discrimination in the enjoyment of them.

The UDHR is not just aspirational - it is customary law, with universal applicability. Whilst there is clarity in its terms there has been resistance to its implementation and sadly, 60 years later we are still having to face the contention that whilst it applies to everyone it does not do so equally: that ageless cliché that everyone is equal but some are more equal than others, and this is not acceptable. No human being, simply because of their perceived sexual orientation or gender identity, may be denied their human rights. No human being, simply because of their perceived sexual orientation or gender identity, may be subject to discrimination, violence, criminal sanctions, or abuse.

The protection of the rights of those who identify as lesbian, gay or bisexual, and those who are transgender, transsexual or intersex, has attracted extremities of thought and passions. There has been considerable progress in terms of legal recognition; I would mention the interpretations by Treaty bodies, in particular the Human Rights Committee and the Committee on Economic, Social and Cultural Economic Rights, where there is now a considerable body of decisions affirming that discrimination on the basis of sexual orientation is contrary to international human rights law.

The position of the human rights courts is becoming similarly homogenous with the courts upholding rights of privacy, freedom of expression and bodily integrity as well as principles of non-discrimination. And I would pause a moment on this element as there are those who argue that because sexual orientation or gender identity are not explicitly mentioned in any of the conventions and covenants then there is no protection. My answer is that such a position

is untenable as a matter of law, and this is confirmed by the evolving jurisprudence. The principle of universality admits no exception. Human rights truly are the birthright of all human beings.

Within the realms of soft law, the Special Procedures mandate holders are increasingly ensuring consideration of these issues within their respective mandates, and indeed, have consistently identified that human rights violations based on sexual orientation or gender identity reflect a protection gap that needs to be closed.

Sadly, despite this progress, there remain all too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically, many of these laws are relics of the colonial era, and are increasingly becoming recognised as anachronistic, and as inconsistent both with international law and with traditional values of dignity, inclusion, and respect for all.

At the global level, some 10 countries still have laws making homosexual activity punishable by death. These laws legalize violence and are used to justify threats, attacks to the physical and moral integrity of persons, including their exposure to torture. Human rights defenders are particularly vulnerable. The stigma attached to these issues means that violence and discrimination often go unpunished, as victims dare not report their cases and the authorities do not pay sufficient attention to those who do.

In South Africa, the right to be protected from discrimination based on sexual orientation is guaranteed by the Constitution, and as a member of the Women's National Coalition, I was proud to have contributed to the inclusion in the Constitution the equality clause which prohibits discrimination on grounds of *inter alia*, sexual orientation. We would do well to remember the words of then South African Minister of Health to the Beijing 4<sup>th</sup> World Conference on Women, who stated :

“To show that we do not have a short memory regarding matters of discrimination, our Constitution has a non-discriminatory clause and discrimination on the basis of sexual orientation is prohibited. Though the number of people may be small, we do not discriminate against them, as we do not discriminate against anyone.”

It is an example of where law is seeking to lead society by showing how the universality of human rights must be made to work in practice. These processes take time. Decades of prejudice, and intolerance cannot be made to disappear by the stroke of the legislators' pen, but it is a start. It is our task and our challenge to move beyond a debate on *whether* all human beings have rights – for such questions were long ago laid to rest by the Universal Declaration – and instead to secure the climate for implementation.

I am delighted and encouraged that there are so many member states, from every region of the globe and reflecting different religious and cultural perspectives, who are supporting this statement. It is exactly a reflection of the UDHR and how human rights protections work, and indicative of the fact that it is the United Nations which must show leadership in protecting what it has crafted. Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family, and are entitled to be treated as such.

I support absolutely the statement on sexual orientation, gender identity and human rights to be read at the General Assembly, hope that it will have resonance and impact on this issue and guarantee that my office will continue to work to uphold the human rights of everyone.

## IV. OFFICE OF THE UN HIGH COMMISSIONER FOR REFUGEES

<http://www.unhcr.org/cgi-bin/texis/vtx/home>

UNHCR GUIDANCE NOTE ON REFUGEE CLAIMS RELATING TO SEXUAL ORIENTATION AND GENDER IDENTITY, United Nations High Commissioner for Refugees (UNHCR) Protection Policy and Legal Advice Section  
Division of International Protection Services, Geneva, 21 November 2008  
<http://www.unhcr.org/refworld/docid/48abd5660.html>

### I. INTRODUCTION

1. This Note provides guidance in respect of refugee claims related to sexual orientation and gender identity. The persecution of people because of their sexual orientation and gender identity is not a new phenomenon. It is only in more recent years that a growing number of asylum claims has been made by lesbian, gay, bisexual and transgender (“LGBT”) individuals. This has necessitated greater awareness among decision-makers of the specific experiences of LGBT asylum-seekers and a deeper examination of the legal questions involved.

2. In recent years, both national judicial decision-making and academic writing have seen substantial progress in the analysis and interpretation of the concepts of sexual orientation and gender identity in the refugee law context. These developments have run parallel to, and indeed drawn upon, a growing jurisprudence and legal developments at the international (through the UN human rights treaty monitoring bodies, for example) and regional level.<sup>1</sup> While this continues to be an evolving area of refugee law, this Note will, *inter alia*, focus on legislative developments, examine international jurisprudence in the refugee context, analyze persecution and persecutory practices as well as build on some of the positive practices developed by States in their asylum decisions. The Note supplements and should be read in conjunction with UNHCR’s *Guidelines on Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*,<sup>2</sup> which remain applicable to LGBT asylum claims made by both men and women.

3. LGBT individuals may be subjected by State authorities, their families or communities to physical, sexual and verbal abuse and discrimination, because of who they are or who they are perceived to be. This might be because of prevailing cultural and social norms, which result in intolerance and prejudice, or because of national laws, which reflect these attitudes. Where such acts of abuse and discrimination go unpunished and/or where LGBT orientation is criminalized,<sup>3</sup> such individuals may, if they seek asylum on these grounds, fall within the

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<sup>1</sup> For an overview of jurisprudence and doctrine relating to the rights of LGBT persons, including human rights violations on grounds of sexual orientation, see International Commission of Jurists (ICJ), *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, 3rd updated edition, 2007, available at [http://www.icj.org/IMG/UN\\_References.pdf](http://www.icj.org/IMG/UN_References.pdf); ICJ, *Sexual Orientation and Gender Identity in Human Rights Law: Jurisprudential, Legislative and Doctrinal References from the Council of Europe and the European Union*, October 2007, available at [http://www.icj.org/IMG/European\\_Compilation-web.pdf](http://www.icj.org/IMG/European_Compilation-web.pdf); and ICJ, *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the Inter-American System*, July 2007, available at [http://www.icj.org/IMG/Inter-American\\_References.pdf](http://www.icj.org/IMG/Inter-American_References.pdf).

<sup>2</sup> UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, available at <http://www.unhcr.org/refworld/docid/3d36f1c64.html> (hereafter: “UNHCR Guidelines on Gender-Related Persecution”).

<sup>3</sup> More than 80 States have laws prohibiting or regulating sexual acts performed by consenting adults of the same sex, often referred to as “sodomy laws”. Some proscribe specific sexual acts regardless of sexual orientation and

refugee definition of the 1951 Convention relating to the Status of Refugees (“1951 Convention”).

4. A common element in the experience of many LGBT applicants is having to keep aspects and sometimes large parts of their lives secret. This may be in response to societal pressure, explicit or implicit hostility and discrimination, and/or criminal sanctions. The consequence is that they often have limited evidence to establish their LGBT identity or may not be able to demonstrate past persecution, in particular where they were not living openly as LGBT in the country of origin.

5. According to the 2007 *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*<sup>4</sup> (“Yogyakarta Principles”), “sexual orientation” refers to a person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender. “Gender identity” refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body, and other expressions of gender, including dress, speech and mannerisms.<sup>5</sup> Courts in various jurisdictions have likewise affirmed that sexual orientation relates not just to conduct or a series of sexual acts, but equally to a person’s identity and how he or she seeks to express it.<sup>6</sup>

6. For the purposes of this Note, the term “LGBT” is used in preference to “homosexuals” as this term tends to make lesbians invisible, does not encompass bisexuals and transgender people and may be considered offensive by many gays and lesbians. Although the term “gay” or “gay people” is sometimes used to describe both men and women whose enduring physical, romantic, and emotional attractions are to persons of the same sex, in this Note preference is given to the use of “gay” to refer to men, while “lesbian” refers to women. “Bisexual” is used to describe a person who is physically, romantically, and emotionally attracted to men and women. While there is no universally accepted definition of “transgender”, in this Note the term refers to men and women whose gender identity does not align to their assigned sex. Transgender does not imply any specific form of sexual orientation and may include transsexuals and cross-dressers. They could identify as female-to-male or male-to-female, and may or may not have undergone surgery and/or hormonal therapy.<sup>7</sup>

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gender identity, while others prohibit a range of same-sex sexual activities. At least seven States maintain the death penalty for such acts. For further information on such laws, see International Gay and Lesbian Human Rights Commission (<http://www.iglhrc.org/site/iglhrc/>) and SodomyLaws.org (<http://www.sodomylaws.org/>).

<sup>4</sup> *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, March 2007, available at [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf) (hereafter: “Yogyakarta Principles”). The Principles were developed by the ICJ and the International Service for Human Rights, and were unanimously adopted during an expert meeting in Yogyakarta, Indonesia, 6–9 November 2006.

<sup>5</sup> See Preamble, and Recitals 4 and 5 of the Yogyakarta Principles, above footnote 4.

<sup>6</sup> Persecution can be perpetrated against an individual as much for the fact of being LGBT, as for acts associated with the status. If harsh punishment is attracted by the latter, “it is scarcely possible that homosexuals are otherwise treated with dignity and respect”; see, *Refugee Appeal No. 74665*, 7 July 2004 (New Zealand Refugee Status Appeals Authority, (RSAA)), paras. 27, 129, available at <http://www.unhcr.org/refworld/docid/42234ca54.html>. See also *Nasser Mustapha Karouni v. Alberto Gonzales, Attorney General*, No. 02-72651, 399 F.3d 1163 (2005), 7 March 2005 (US Court of Appeals, Ninth Circuit), at III[6], available at <http://www.unhcr.org/refworld/docid/4721b5c32.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs* [2003] HCA 71, 9 December 2003 (High Court of Australia), para. 81, available at <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

<sup>7</sup> For further definitions, see, for instance, Gay & Lesbian Alliance Against Defamation, *Media Reference Guide*, 7th edition, May 2007, available at [http://www.glaad.org/media/guide/GLAAD\\_MediaRefGuide\\_7thEdition.pdf](http://www.glaad.org/media/guide/GLAAD_MediaRefGuide_7thEdition.pdf); Merriam-Webster OnLine Dictionary, available at <http://www.merriam-webster.com/dictionary>.



## II. SUBSTANTIVE ANALYSIS

### A. BACKGROUND

7. An applicant's sexual orientation can be relevant to a refugee claim where he or she fears persecutory harm on account of his or her actual or perceived sexual orientation, which does not, or is seen not to, conform to prevailing political, cultural or social norms.<sup>1</sup> The refugee definition applies to all persons without distinction as to sex, age, sexual orientation, gender identity, marital or family status, or any other status or characteristics. Some States have chosen to include specific references to sexual orientation in the refugee definition in domestic legislation.<sup>2</sup>

8. Sexual orientation is a fundamental part of human identity, as are those five characteristics of human identity that form the basis of the refugee definition: race, religion, nationality, membership of a particular social group and political opinion.<sup>3</sup> Claims relating to sexual orientation and gender identity are primarily recognized under the 1951 Convention ground of membership of a particular social group, but may also be linked to other grounds, notably political opinion and religion, depending on the circumstances. This has been affirmed by courts and tribunals in various jurisdictions, including Australia, Canada, France, Germany, New Zealand, Sweden, the United Kingdom and the United States.<sup>4</sup>

9. Although freedom of sexual orientation is not explicitly recognized as an international human right, it is now well established that LGBT persons are entitled to all human rights on an equal basis with others. The Preamble to the 1951 Convention reiterates the principle that "human beings shall enjoy fundamental rights and freedoms without discrimination". The principle of non-discrimination is also enshrined in Articles 2(1) and 26 of the *International Covenant on Civil and Political Rights* ("ICCPR"), and in Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR").<sup>5</sup> The Yogyakarta Principles reflect binding international legal standards with regard to sexual orientation which are derived from key human rights instruments.<sup>6</sup>

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<sup>1</sup> See *UNHCR Guidelines on Gender-Related Persecution*, above footnote 2, paras. 6–7. See also UNHCR, *Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, 3 September 2004, para. 3, available at <http://www.unhcr.org/refworld/docid/4551c0d04.html> (hereafter: "*UNHCR Advisory Opinion to the Tokyo Bar Association*").

<sup>2</sup> See, for instance, Sweden, *Aliens Act (SFS 2005:716)*, Chapter 4, Section 1, available at <http://www.unhcr.org/refworld/docid/3ae6b50a1c.html>. See also Migrationsverket (Swedish Migration Board), *Guidelines for Investigation and Evaluation of Asylum Cases in which Persecution Based on Given Sexual Orientation is Cited as a Ground*, 28 January 2002, available at <http://www.unhcr.org/refworld/docid/3f8c1af44.html>.

<sup>3</sup> As defined in Article 1A(2) of the *Convention relating to the Status of Refugees*, 28 July 1951, available at <http://www.unhcr.org/refworld/docid/3be01b964.html> (hereafter: "1951 Convention").

<sup>4</sup> For a more detailed discussion of national case law, see below Section C. CONVENTION GROUNDS.

<sup>5</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>, and UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, available at <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>. The non-discrimination provisions on account of "sex" or "other status" in the ICCPR and ICESCR, as well as in Article 2 of the *Convention on the Rights of the Child* (available at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>), are to be taken as including sexual orientation, as affirmed by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child. The same interpretation has been adopted by the European Court of Human Rights (ECtHR) in relation to Article 14 (Prohibition of discrimination) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereafter: "ECHR") (available at <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>). See also, *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 30 June 1993 (Supreme Court of Canada), available at <http://www.unhcr.org/refworld/docid/3ae6b673c.html>, drawing on the Preamble to the 1951 Convention; *Islam (A.P.) v. Secretary of State for the Home Department; R. v. Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.)* [1999] UKHL 20, 25 March 1999 (United Kingdom House of Lords), available at <http://www.unhcr.org/refworld/docid/3dec8abe4.html>.

<sup>6</sup> See Yogyakarta Principles, above footnote 4. For regional instruments specifically addressing sexual orientation, see Organization of American States, "*Human Rights, Sexual Orientation, and Gender Identity*," AG/Res. 2435

## B. WELL-FOUNDED FEAR OF PERSECUTION

10. Persecution can be considered to involve serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm, as assessed in light of the opinions, feelings and psychological make-up of the applicant.<sup>7</sup> Developments in international human rights law can help decision-makers determine the persecutory nature of the various forms of harm that a person may experience on account of his or her sexual orientation.<sup>8</sup> A pattern of harassment and discrimination could, on cumulative grounds, reach the threshold of persecution. While the element of discrimination is often central to claims made by LGBT persons, they also frequently reveal experiences of serious physical and, in particular, sexual violence. Each of the incidents of harm must be assessed in a holistic manner. They must be evaluated in light of the prevailing situation and attitudes with regard to sexual orientation and gender identity in the country of origin.

11. International and regional jurisprudence and legal doctrine affirm that discrimination on account of a person's sexual orientation is prohibited.<sup>9</sup> Discriminatory measures may be enforced through law and/or through societal practice, and could have a range of harmful outcomes. Discrimination will amount to persecution where such measures, individually or cumulatively, lead to consequences of a substantially prejudicial nature for the person concerned. This may be the case, for instance, where a LGBT person is consistently denied access to normally available services, be they in his or her private life or workplace, such as education, welfare, health, and the judiciary.<sup>10</sup> As noted in the UNHCR *Handbook*:

Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution, if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his [or her] future existence.<sup>11</sup>

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(XXXVIII-O/08), 3 June 2008, available at [http://www.oas.org/dil/AGRES\\_2435.doc](http://www.oas.org/dil/AGRES_2435.doc); European Parliament, *Resolution of 26 April 2007 on Homophobia in Europe*, Resolution P6\_TA(2007)0167, 26 April 2007 available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0167+0+DOC+XML+V0//EN>. See also Article 7(g) of the Council of Europe, Parliamentary Assembly, *Recommendation 1470 (2000), Situation of Gays and Lesbians and their Partners in Respect of Asylum and Immigration in the Member States of the Council of Europe*, 30 June 2000, available at <http://www.unhcr.org/refworld/docid/3dde404c6.html>, which urges Member States *inter alia* to “co-operate more closely with UNHCR and national non-governmental organisations, promote the networking of their activities, and urge them to systematically monitor the observance of the immigration and asylum rights of gays and lesbians”.

<sup>7</sup> See, for instance, *HS (Homosexuals: Minors, Risk on Return) Iran v. Secretary of State for the Home Department* [2005] UKAIT 00120, 4 August 2005 (UK Asylum and Immigration Tribunal (AIT)), available at <http://www.unhcr.org/refworld/docid/47fdafe0.html>, regarding the impact of the persecutory acts on the individual.

<sup>8</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1979, re-edited January 1992, available at <http://www.unhcr.org/refworld/docid/3ae6b3314.html> (hereafter “UNHCR *Handbook*”), paras. 42, 60. See also, for instance, *Refugee Appeal No. 76152*, 8 January 2008 (New Zealand RSAA), para. 34, available at <http://www.unhcr.org/refworld/docid/47bd93cf2.html>; *Refugee Appeal No. 74665*, above footnote 6, paras. 81–123.

<sup>9</sup> For an overview, see the compilations produced by the ICJ, above footnote 1. See also Michael O’Flaherty and John Fisher, “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles”, *Human Rights Law Review*, Vol. 8, No. 2 (2008), pp. 207–48, available at <http://hrlr.oxfordjournals.org/cgi/reprint/8/2/207>.

<sup>10</sup> See, for instance, *Decision No. MA6-01580*, 12 January 2007 (Immigration and Refugee Board (IRB) of Canada), available at <http://www.unhcr.org/refworld/docid/482457202.html>; *HS (Homosexuals: Minors, Risk on Return) Iran*, above footnote 14, para. 147.

<sup>11</sup> UNHCR *Handbook*, above footnote 15, paras. 54–55. See also *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*, 1998 (12) BCLR 1517 (CC), 9 October 1998 (Constitutional Court of South Africa), para. 113, available at <http://www.unhcr.org/refworld/docid/48246cf72.html>.

12. Being compelled to forsake or conceal one's sexual orientation and gender identity, where this is instigated or condoned by the State, may amount to persecution.<sup>12</sup> LGBT persons who live in fear of being publicly identified will often conceal their sexual orientation as a result in order to avoid the severe consequences of such exposure, including the risk of incurring harsh criminal penalties, arbitrary house raids, dismissal from employment and societal disapproval. Such actions can not only be considered discriminatory and as violating the right to privacy, but also as infringing the right to freedom of opinion and expression. As interpreted by the Yogyakarta Principles:

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.<sup>13</sup>

13. LGBT persons may be unable to forge meaningful relationships, be forced into arranged marriages or experience extreme pressure to marry. They might fear that a failure to marry will ultimately mark them out as LGBT in the public eye. Social, cultural and other restrictions which require them to marry persons of the opposite sex can have the effect of violating the right to marry with full and free consent, and the right to respect for private life.<sup>14</sup> Such community pressure could escalate beyond general societal expectations and reach the threshold of persecution, bearing in mind that LGBT persons may experience such pressures differently from heterosexuals.<sup>15</sup>

14. Claims made by LGBT persons often reveal exposure to physical and sexual violence, extended periods of detention, medical abuse, threat of execution and honour killing. These are all acts of harm and mistreatment so serious in nature that they would, generally, reach the threshold of persecution within the meaning of the 1951 Convention. Severe forms of family and community violence, rape and other forms of sexual assault, particularly if occurring in detention settings, would fall within the definition of torture.<sup>16</sup> Such acts violate the right to life, liberty and security of person, and the right not to be subjected to torture, cruel, inhumane or degrading treatment, as contained in various international human right

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<sup>12</sup> See, for instance, *RRT Case No. 071818233* [2008] RRTA 62, 15 February 2008 (Refugee Review Tribunal (RRT) of Australia), available at <http://www.unhcr.org/refworld/docid/484552e22.html>.

<sup>13</sup> Yogyakarta Principles, above footnote 4, the right to freedom of opinion and expression (Principle 19). Requiring a person to conceal his or her sexual orientation or identity would also violate the right to the universal enjoyment of human rights (Principle 1), the right to equality and non-discrimination (Principle 2), the right to recognition before the law (Principle 3), and the right to participate in public life (Principle 25). See also, *Smith and Grady v. United Kingdom*, Applications Nos. 33985/96 and 33986/96, 27 September 1999 (ECtHR), available at <http://www.unhcr.org/refworld/docid/47fdfac80.html>, where the Court noted that it “would not rule out that the silence imposed on the applicants as regards their sexual orientation, together with the consequent and constant need for vigilance, discretion and secrecy in that respect with colleagues, friends and acquaintances as a result of the chilling effect of the Ministry of Defence policy, could constitute an interference with their freedom of expression” (para. 127).

<sup>14</sup> See Article 23(3) of the ICCPR, above footnote 12: “No marriage shall be entered into without the free and full consent of the intending spouses”. See also UN General Assembly, *Convention on the Elimination of Discrimination Against Women*, 18 December 1979, available at <http://www.unhcr.org/refworld/docid/3b00f2244.html>. Article 16 of the Convention stipulates, *inter alia*, that State Parties shall ensure (b) “The same right freely to choose a spouse and to enter into marriage only with their free and full consent.” See also Article 12 of the ECHR, above footnote 12: “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

<sup>15</sup> See, for instance, *SZANS v. Minister for Immigration* [2004] FMCA 445, 13 August 2004 (Federal Magistrates' Court of Australia), available at <http://www.austlii.edu.au/au/cases/cth/FMCA/2004/445.html>

<sup>16</sup> See, for instance, *HS (Homosexuals: Minors, Risk on Return) Iran*, above footnote 14, paras. 57, 134. See also UN Human Rights Council, “*Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural rights, including the Right to Development, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*”, A/HRC/7/3, 15 January 2008, paras. 34–49, available at <http://www.unhcr.org/refworld/docid/47c2c5452.html>.

instruments. LGBT persons could also experience lesser forms of physical and psychological harm, including harassment, threats of harm, vilification, intimidation, and psychological violence that can rise to the level of persecution, depending on the individual circumstances of the case and the impact on the particular applicant.

15. While the violence and human rights abuses faced by LGBT persons have many common elements, it is also necessary to distinguish among them. Lesbian women often experience harm as a result of the inter-relation of their sexual orientation and gender, since women's position in society is generally less powerful than that of men.<sup>17</sup> Lesbians are even more likely than gay men to feel obliged to conform outwardly to family and social expectations, for instance, by marrying someone of the opposite sex. In societies where women are regarded primarily as the wives (of men) and mothers, lesbians may be isolated and invisible. They are generally at a higher risk of harm at the hands of non-State actors than are gay men, including as a result of retaliatory violence by former partners or husbands. They often have lesser access to informal protection systems, including organized venues of support in the country of origin.

16. Transgender persons, as even a smaller group, will often have distinct experiences of persecution. These could, for example, relate to accessing health care or due to an increased risk of exposure to harm if their gender identity is not legally recognized (where, for instance, they are not able to change their name and sex in the civil registry). Such exposure could, for instance, be prompted where a transgender individual is asked by the authorities to produce identity documents and his or her physical appearance does not correspond to the sex as indicated in the documents. Someone who is seeking to change or has changed his or her sex may particularly be perceived as challenging prevailing conceptions of gender roles.

#### **i. Laws criminalizing homosexual conduct**

17. Criminal laws prohibiting same-sex consensual relations between adults have been found to be both discriminatory and to constitute a violation of the right to privacy.<sup>18</sup> The very existence of such laws, irrespective of whether they are enforced and the severity of the penalties they impose, may have far-reaching effects on LGBT persons' enjoyment of their fundamental human rights.<sup>19</sup> Even where homosexual practices are not criminalized by specific provisions, others directed at homosexual sex such as those proscribing "carnal acts against the order of nature" and other crimes, such as "undermining public morality" or "immoral gratification of sexual desires", may be relevant for the assessment of the claim.<sup>20</sup>

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<sup>17</sup> See *Amare v. Secretary of State for the Home Department* [2005] EWCA Civ 1600, 20 December 2005 (England and Wales Court of Appeal), where the Court noted (although dismissing the appeal on other grounds), that the "combination of discrimination against women and discrimination against homosexuals is an especially poisonous mix liable to give rise to the risk of persecution", para. 17, available at <http://www.unhcr.org/refworld/docid/47fdfb5b0.html>. See also, *RRT Case No. 071862642* [2008] RRTA 40, 19 February 2008 (RRT of Australia), available at <http://www.unhcr.org/refworld/docid/4811a7192.html>.

<sup>18</sup> See *Toonen v. Australia*, CCPR/C/50/D/488/1992, 4 April 1994 (Human Rights Committee), paras. 8.6–8.7, available at <http://www.unhcr.org/refworld/docid/48298b8d2.html>. Finding a violation of Article 17 of the ICCPR, the Committee noted that while the applicant had not yet been prosecuted under the Tasmanian Criminal Code, the "criminalization of homosexuality in private has not permitted him to expose openly his sexuality and to publicize his views of reform of the relevant laws on sexual matters", and that the relevant sections of the Criminal Code interfered with the author's privacy, "even if these provisions have not been enforced for a decade". See also, *Dudgeon v. United Kingdom*, Application No. 7525/76, 22 October 1981 (ECtHR), available at <http://www.unhcr.org/refworld/docid/47fdfaf7d.html>.

<sup>19</sup> See, further, *Case of Norris v. Ireland*, Application No. 10581/83, 26 October 1988 (ECtHR), para. 38, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=10581/83&sessionid=12354864&skin=hudoc-en>.

<sup>20</sup> See for instance, *RRT Case No. 071862642*, above footnote 24. The applicant was found to be in need of international protection even in the absence of a specific law criminalizing homosexual acts in the country of origin.

18. A law can be considered as persecutory *per se*, for instance, where it reflects social or cultural norms which are not in conformity with international human rights standards. The applicant, however, still has to show that he or she has a well-founded fear of being persecuted as a result of that law. Penal prosecution, under a law which *per se* is not inherently persecutory or discriminatory, may in itself amount to persecution, for instance, if applied to particular groups only or, if it is arbitrary or unlawfully executed.<sup>21</sup>

19. Where harsh punishments are imposed that do not conform to international human rights standards, such as the death penalty or severe corporal punishment, including flogging, their persecutory character is particularly evident.<sup>22</sup> A substantive body of international and national jurisprudence affirms that consensual homosexual conduct is not to be criminalized.<sup>23</sup> In some circumstances, one cannot exclude that even relatively lenient punishment can be considered disproportionate and persecutory. A too narrow focus on the severity of the penalty could in effect reinforce the misperception that being LGBT constitutes a crime.<sup>24</sup>

20. An applicant may exceptionally be able to demonstrate a well-founded fear of persecution even if a law criminalizing LGBT is no longer enforced, where the existence of that law has the effect of creating an intolerable predicament for him or her. Such laws, although no longer systematically enforced, can also be used by the authorities for extortionary purposes, or be enforced in an unofficial manner which does not lead to recorded prosecutions, such as through police inflicted violence or extra-legal detention.<sup>25</sup>

21. What is material to a refugee status determination is whether there is a real risk of harm should the applicant have to return to the country of origin. Persecution may be found even where there is no conclusive country of origin information to evidence that laws criminalizing homosexual conduct are actually enforced. This can be the case if a State seeks to disguise its penalization of LGBT persons from the outside world, for example, by prosecuting them instead for crimes of rape, child molestation or drug-related crimes which he or she is alleged to have committed. A high burden of proof for the crimes, including strict evidentiary requirements, should also not be taken as an indication of a lesser possibility of enforcement but needs to be read in its religious and societal context. A pervading and/or generalized climate of homophobia in the country of origin (for example, where the government displays

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<sup>21</sup> See further *UNHCR Handbook*, above footnote 15, paras. 57, 59; *UNHCR Guidelines on Gender-Related Persecution*, above footnote 2, para. 10; *UNHCR Advisory Opinion to the Tokyo Bar Association*, above footnote 8, paras. 4, 10.

<sup>22</sup> See further, *UNHCR Guidelines on Gender-Related Persecution*, above footnote 2, para. 12. See also, Yogyakarta Principles, above footnote 4, the right to life (Principle 4): “Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity”, requiring States, *inter alia*, to “repeal all forms of crime that the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them” (Principle 4.A).

<sup>23</sup> See, for instance, *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others*, above footnote 18. The Court found that the common law offence of sodomy was repugnant to constitutional provisions which prohibited discrimination on grounds of sexual orientation, and noted that “conduct that deviates from some publicly established norm is usually only punishable when it is violent, dishonest, treacherous or in some other way disturbing of the public peace or provocative of injury. In the case of male homosexuality however, the perceived deviance is punished simply because it is deviant. It is repressed for its perceived symbolism rather than because of its proven harm” (para. 108).

<sup>24</sup> Some jurisdictions, while admitting that “there is no easy formulation” hold that the criminalization of homosexual conduct is persecutory only if “accompanied by penal sanctions of severity which are in fact in force”. See, for instance, *Refugee Appeal No. 74665*, above footnote 6, para. 103; *Refugee Appeal No. 76152*, above footnote 15, para. 34.

<sup>25</sup> See, for instance, *Decision VA5-02751*, 16 February 2007 (IRB of Canada), available at <http://www.unhcr.org/refworld/docid/48245a5f2.html>; *Refugee Appeal No. 76152*, above footnote 15, para. 50.

its disapproval through harsh anti-homosexual rhetoric, where LGBT persons are repressed and surveilled by their families or neighbours, or the media uses derogatory stereotypes to describe them) can be considered an indication that LGBT persons are being persecuted.<sup>26</sup>

22. It should furthermore be noted that criminal sanctions for homosexual activity also impede the access of LGBT persons to State protection. For example, a LGBT person who has been exposed to violence may hesitate to approach the police for protection because he or she may be regarded as an offender instead of a victim. An applicant could therefore also establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect him or her effectively against such harm.<sup>27</sup> It should also be noted that where an individual is seeking asylum in a country where same sex relations are criminalized, such laws can impede his or her access to asylum procedures or deter the person from presenting his or her LGBT experiences as part of the claim to refugee status. In such situations, it may be necessary for UNHCR to become directly involved in the case.

### **ii. Fear of future persecution**

23. LGBT applicants who have concealed their sexual orientation in the country of origin might not have experienced harm in the past sufficient to amount to persecution. It is possible that their conduct was not a voluntary choice and was modified precisely to avoid the threat of being persecuted. As noted by the High Court of Australia: “it is the *threat* of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance without determining whether the modified conduct was influenced by the threat of harm is to fail to consider that issue properly.”<sup>28</sup> Additionally, LGBT persons, who have left their country of origin for a reason other than their sexual orientation and/or have “come out”<sup>29</sup> after arrival in the country of asylum, could qualify for refugee status if they can demonstrate a well-founded fear of *future* persecution.<sup>30</sup>

24. As with claims based on political opinion, an applicant claiming a fear of being persecuted on account of his or her sexual orientation need not show that the authorities knew about his or her sexual orientation before he or she left the country of origin. The well-foundedness of the fear will in such cases be based on the assessment of the consequences that an applicant with a certain sexual orientation would have to face if he or she returned.<sup>31</sup> Moreover, the fact that a LGBT applicant has never actually been prosecuted for his or her homosexual conduct does not prevent him or her from having a well-founded fear of being persecuted.<sup>32</sup>

### **iii. Avoiding persecution**

25. A person cannot be expected or required by the State to change or conceal his or her identity in order to avoid persecution. As affirmed by numerous jurisdictions, persecution does not cease to be persecution because those persecuted can eliminate the harm by taking

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<sup>26</sup> See, for instance, European Parliament, *Resolution of 13 March 2008 on the Case of the Iranian Citizen Sayyed Mehdi Kazemi*, PA\_TA-PROV(2008)0107, 13 March 2008, available at <http://www.unhcr.org/refworld/docid/47da75002.html>.

<sup>27</sup> See further below Sub-section B iv. Agents of persecution. See also, *UNHCR Guidelines on Gender-Related Persecution*, above footnote 2, para. 17. See also, *Décision M. OI, No. 543182*, 31 May 2006 (Commission des Recours des Réfugiés (CRR), France), where the Commission found that although laws criminalizing homosexual activity had been repealed, cultural norms still led to persecution.

<sup>28</sup> *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, above footnote 6, para. 43.

<sup>29</sup> For the purposes of this Note, the term “come out” refers to the process in which an individual acknowledges and accepts his or her own sexual and gender identity and feels able to inform others about it.

<sup>30</sup> *UNHCR Handbook*, above footnote 15: “Fear refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution” (para. 45).

<sup>31</sup> *Ibid.*, para. 83.

<sup>32</sup> *UNHCR Advisory Opinion to the Tokyo Bar Association*, above footnote 8, para. 12.

avoiding action.<sup>33</sup> Just as a claim based on political opinion or nationality would not be dismissed on grounds that the applicant could avoid the anticipated harm by changing or concealing his or her beliefs or identity, applications based on sexual orientation and gender identity should not be rejected merely on such grounds.<sup>34</sup> As noted by the Immigration and Refugee Board of Canada:

Into the equation must be added the claimant's new found freedom of expression in Canada and his desire to live openly in Sri Lanka as he does here in Canada [...]. We do not tell claimants that they have a right to practise their religion so long as they hide it. A hidden right is not a right.<sup>35</sup>

26. The question to be considered is whether the applicant has a well-founded fear of being persecuted, rather than whether he or she could live in the country of origin without attracting adverse consequences.<sup>36</sup> This requires an objective examination of how the applicant may be treated if he or she were returned to that country. Hence, it is not relevant whether the applicant's conduct with regard to his or her sexual orientation is viewed as "reasonable" or "necessary". There is no duty to be "discreet" or to take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships. A requirement for discretion would furthermore imply that a person's sexual orientation is confined to a mere sexual act, thereby overlooking a range of behaviours and everyday activities otherwise affected by that person's sexual orientation and gender identity.<sup>37</sup> It would, in fact, amount to requiring the "same submissive and compliant behaviour, the same denial of a fundamental human right, which the agent of persecution seeks to achieve by persecutory conduct".<sup>38</sup> As stated by the New Zealand Refugee Status Appeal Authority:

Understanding the predicament of "being persecuted" as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection means that the refugee definition is to be approached not from the perspective of what the refugee claimant can do to avoid being persecuted, but from the perspective of the fundamental human right in jeopardy and the resulting harm.<sup>39</sup>

#### **iv. Agents of persecution**

27. Persecution may be perpetrated either by (i) State actors, for example, through the

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<sup>33</sup> See, for instance, *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, above footnote 6, paras. 34–60; *Refugee Appeal No. 74665*, above footnote 6, paras. 114, 126–127; *Nasser Mustapha Karouni, Petitioner, v. Alberto Gonzales, Attorney General*, above footnote 6; *DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica v. Secretary of State for the Home Department* CG [2005] UKAIT 00168, 28 November 2005 (UK AIT), para. 78, available at <http://www.unhcr.org/refworld/docid/46836aa80.html>.

<sup>34</sup> *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, above footnote 6, para. 41: "It would undermine the object of the Convention if the signatory countries required them to modify their beliefs or opinions or to hide their race, nationality or membership of particular social groups before those countries would give them protection under the Convention." See also with regard to the concealment of ethnicity, *HYSI v. Secretary of State for the Home Department* [2005] EWCA Civ 711, 15 June 2005 (England and Wales Court of Appeal), paras. 32–34, 37, available at <http://www.unhcr.org/refworld/docid/43fc2eac24.html>.

<sup>35</sup> *Decision VA5-02751*, above footnote 32. See also, *Decision No. IV/IE06244/81*, 26 April 1983 (Administrative Court (Verwaltungsgericht) Wiesbaden, Germany).

<sup>36</sup> See, for instance, *MN (Findings on sexuality), Kenya v. Secretary of State for the Home Department* [2005] UK IAT 00021, 28 January 2005 (UK Immigration Appeal Tribunal (IAT)), paras. 21–23, 25, available at <http://www.unhcr.org/refworld/docid/47a7081cd.html>.

<sup>37</sup> See *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, above footnote 6, paras. 40–45; and *Wang v. Minister for Immigration & Multicultural Affairs* [2000] FCA 1599, 10 November 2000 (Federal Court of Australia), paras. 91, 99, available at <http://www.unhcr.org/refworld/docid/47fdfb330.html>.

<sup>38</sup> See *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others*, above footnote 18, para. 130.

<sup>39</sup> *Refugee Appeal No. 74665*, 7 July 2004 (New Zealand Refugee Status Appeals Authority, (RSAA)), para. 114, available at <http://www.unhcr.org/refworld/docid/42234ca54.html>.

criminalization of consensual sexual relations between persons of the same sex, through physical or sexual violence, or degrading treatment inflicted by those under their direct control, or by (ii) non-State (private) actors. A refugee claim can, thus, be established where the State is unwilling or unable to protect against violations committed by State or non-State actors. Instances where a State's inaction may be persecutory include failure of the police to respond to requests for assistance and refusal by the authorities to investigate, prosecute or punish individuals inflicting harm on LGBT persons. Non-State actors, whether family members, neighbours, strangers or work colleagues, can either be directly involved in persecutory acts, including through physical abuse and forced marriage, or indirectly by exposing the individual concerned to harm, for example, by reporting his or her conduct or sexual orientation to the authorities.



## V. GENERAL ASSEMBLY JOINT STATEMENT

### **Joint Statement from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly, 63<sup>rd</sup> Session, A/63/635, 18 December 2008**

We have the pleasure of transmitting a statement on human rights, sexual orientation and gender identity (...), signed by Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela.

1. We reaffirm the principle of universality of human rights, as enshrined in the Universal Declaration of Human Rights, whose sixtieth anniversary is celebrated this year, article 1 of which proclaims that “all human beings are born free and equal in dignity and rights”.
2. We reaffirm that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as set out in article 2 of the Universal Declaration of Human Rights, and article 2 of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as in article 26 of the International Covenant on Civil and Political Rights.
3. We reaffirm the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.
4. We are deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity.
5. We are also disturbed that violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses.
6. We condemn the human rights violations based on sexual orientation or gender identity wherever they occur, in particular the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights, including the right to health.
7. We recall the statement in 2006 before the Human Rights Council by fifty-four countries requesting the President of the Council to provide an opportunity, at an appropriate future session of the Council, to discuss these violations.
8. We commend the attention paid to these issues by special procedures of the Human Rights Council and treaty bodies and encourage them to continue to integrate consideration of human rights violations based on sexual orientation or gender identity within their relevant mandates.

9. We welcome the adoption of resolution AG/RES. 2435 (XXXVIII-O/08) entitled “Human Rights, Sexual Orientation, and Gender Identity” by the General Assembly of the Organization of American States during its thirty-eighth session, on 3 June 2008.

10. We call upon all States and relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation or gender identity.

11. We urge States to take all the necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.

12. We urge States to ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.

13. We urge States to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.

## **ANNEX I. IMPORTANT ELEMENTS FROM PREVIOUS EDITIONS**

### **HUMAN RIGHTS COMMITTEE**

#### **Communication No. 941/2000: Australia, CCPR/C/78/D/941/2000, Mr. Edward Young v. Australia, 18 September 2003**

10.4 The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. It recalls that in previous communications the Committee found that differences in the receipt of benefits between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry with all the entailing consequences. It transpires from the contested sections of the VEA that individuals who are part of a married couple or of a heterosexual cohabiting couple (who can prove that they are in a "marriage-like" relationship) fulfill the definition of "member of a couple" and therefore of a "dependant", for the purpose of receiving pension benefits. In the instant case, it is clear that the author, as a same sex partner, did not have the possibility of entering into marriage. Neither was he recognized as a cohabiting partner of Mr. C for the purpose of receiving pension benefits, because of his sex or sexual orientation. The Committee recalls its constant jurisprudence that not every distinction amounts to prohibited discrimination under the Covenant, as long as it is based on reasonable and objective criteria. The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced.

In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation.

#### **Communication No. 902/1999: New Zealand, CCPR/C/75/D/902/1999, Ms. Juliet Joslin et al. v. New Zealand, 30 July 2002**

8.2 [...] Article 23, paragraph 2, of the Covenant is the only substantive provision in the Covenant which defines a right by using the term "men and women", rather than "every human being", "everyone" and "all persons". Use of the term "men and women", rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other.

8.3 In light of the scope of the right to marry under article 23, paragraph 2, of the Covenant, the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors under articles 16, 17, 23, paragraphs 1 and 2, or 26 of the Covenant.

### **INDIVIDUAL OPINION OF COMMITTEE MEMBERS MR. RAJSOOMER LALLAH AND MR. MARTIN SCHEININ (CONCURRING)**

We found no difficulty in joining the Committee's consensus on the interpretation of the right to marry under article 23, paragraph 2. [...] The provision in no way limits the liberty of States, pursuant to article 5, paragraph 2, to recognize, in the form of marriage or in some other comparable form, the companionship between two men or between two women.

However, no support can be drawn from this provision for practices that violate the human rights or dignity of individuals, such as child marriages or forced marriages.

As to the Committee's unanimous view that it cannot find a violation of article 26, either, in the non-recognition as marriage of the same-sex relationships between the authors, we wish to add a few observations. This conclusion should not be read as a general statement that differential treatment between married couples and same-sex couples not allowed under the law to marry would never amount to a violation of article 26. On the contrary, the Committee's jurisprudence supports the position that such differentiation may very well, depending on the circumstances of a concrete case, amount to prohibited discrimination.

Contrary to what was asserted by the State party (para. 4.12), it is the established view of the Committee that the prohibition against discrimination on grounds of "sex" in article 26 comprises also discrimination based on sexual orientation. And when the Committee has held that certain differences in the treatment of married couples and unmarried heterosexual couples were based on reasonable and objective criteria and hence not discriminatory, the rationale of this approach was in the ability of the couples in question to choose whether to marry or not to marry, with all the entailing consequences. No such possibility of choice exists for same-sex couples in countries where the law does not allow for same-sex marriage or other type of recognized same-sex partnership with consequences similar to or identical with those of marriage. Therefore, a denial of certain rights or benefits to same-sex couples that are available to married couples may amount to discrimination prohibited under article 26, unless otherwise justified on reasonable and objective criteria.

However, in the current case we find that the authors failed, perhaps intentionally, to demonstrate that they were personally affected in relation to certain rights not necessarily related to the institution of marriage, by any such distinction between married and unmarried persons that would amount to discrimination under article 26. Their references to differences in treatment between married couples and same-sex unions were either repetitious of the refusal of the State party to recognize same-sex unions in the specific form of "marriage" (para. 3.1), an issue decided by the Committee under article 23, or remained unsubstantiated as to if and how the authors were so personally affected (para. 3.5). (...)

**Communication No. 488/1992: Australia, CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994**

8.2 In as much as article 17 is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of "privacy", and that Mr. Toonen is actually and currently affected by the continued existence of the Tasmanian laws. The Committee considers that Sections 122 (a), (c) and 123 of the Tasmanian Criminal Code "interfere" with the author's privacy, even if these provisions have not been enforced for a decade. In this context, it notes that the policy of the Department of Public Prosecutions not to initiate criminal proceedings in respect of private homosexual conduct does not amount to a guarantee that no actions will be brought against homosexuals in the future, particularly in the light of undisputed statements of the Director of Public Prosecutions of Tasmania in 1988 and those of members of the Tasmanian Parliament. The continued existence of the challenged provisions therefore continuously and directly "interferes" with the author's privacy.

8.3 The prohibition against private homosexual behaviour is provided for by law, namely, sections 122 and 123 of the Tasmanian Criminal Code. As to whether it may be deemed arbitrary, the Committee recalls that pursuant to its general comment 16 on article 17, the "introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by the law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the circumstances". The Committee

interprets the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

8.5 As far as the public health argument of the Tasmanian authorities is concerned, the Committee notes that the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV. The Australian Government observes that statutes criminalizing homosexual activity tend to impede public health programmes "by driving underground many of the people at the risk of infection". Criminalization of homosexual activity thus would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention. Secondly, the Committee notes that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus.

8.6 The Committee cannot accept either that for the purposes of article 17 of the Covenant, moral issues are exclusively a matter of domestic concern, as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with privacy.

It further notes that with the exception of Tasmania, all laws criminalizing homosexuality have been repealed throughout Australia and that, even in Tasmania, it is apparent that there is no consensus as to whether sections 122 and 123 should not also be repealed. Considering further that these provisions are not currently enforced, which implies that they are not deemed essential to the protection of morals in Tasmania, the Committee concludes that the provisions do not meet the "reasonableness" test in the circumstances of the case, and that they arbitrarily interfere with Mr. Toonen's right under article 17, paragraph 1.

8.7 The State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to nothing, however, that in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.

**Communication No. 61/1979: Finland, CCPR/C/15/D/61/1979, Leo R- Hertzberg, Uit Mansson, Astrid Nikula and Marko and Tuovi Putkonen, represented by SETA (Organization for Sexual Equality) v Finland, 2 April 1982**

10.1 Concerning Leo Rafael Hertzberg, the Committee observes that he cannot validly claim to be a victim or a breach by the State party of his right under article 19 (2) of the Covenant. The programme in which he took part was actually broadcast in 1976. No sanctions were imposed against him. Nor has the author claimed that the programme restrictions as applied by FBC would in any way personally affect him. The sole fact that the author takes a personal interest in the dissemination of information about homosexuality does not make him a victim in the sense required by the Optional Protocol.

10.2 With regard to the two censored programmes of Mrs. Nikula and of Marko and Tuovi Putkonen, the Committee accepts the contention of the authors that their rights under article 19 (2) of the Covenant have been restricted. While not every individual can be deemed to hold a right to express himself through a medium like TV, whose available time is limited, the situation may be different when a programme has been produced for transmission within the framework of a broadcasting organization with the general approval of the responsible authorities. On the other hand, article 19 (3) permits certain restrictions on the exercise of the rights protected by article 19 (2), as are provided by law and are necessary for the protection of public order or of public health or morals. In the context of the present communication, the

Finnish Government has specifically invoked public morals as justifying the actions complained of. The Committee has considered whether, in order to assess the necessity of those actions, it should invite the parties to submit the full text of the censored programmes. In fact, only on the basis of these texts could it be possible to determine whether the censored programmes were mainly or exclusively made up of factual information about issues related to homosexuality.

10.3 The Committee feels, however, that the information before it is sufficient to formulate its views on the communication. It has to be noted, first, that public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.

10.4 The Committee finds that it cannot question the decision of the responsible organs of the Finnish Broadcasting Corporation that radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. According to article 19 (3), the exercise of the rights provided for in article 19 (2) carries with it special duties and responsibilities for those organs. As far as radio and TV programmes are concerned, the audience cannot be controlled, in particular, harmful effects on minors cannot be excluded.

#### INDIVIDUAL OPINION APPENDED TO THE COMMITTEE'S VIEWS AT THE REQUEST OF MR. TORHEL OPSAHL

Although I agree with the conclusion of the Committee, I wish to clarify certain points.

This conclusion prejudices neither the right to be different and live accordingly, protected by article 17 of the Covenant, nor the right to have general freedom of expression in this respect, protected by article 19. Under article 19 (2) and subject to article 19 (3), everyone must in principle have the right to impart information and ideas - positive or negative - about homosexuality and discuss any problem relating to it freely, through any media of his choice and on his own responsibility.

#### COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

##### **General Comment No. 18: The Right to Work (art. 6), E/C.12/GC/18, 6 February 2006**

12. The exercise of work in all its forms and at all levels requires the existence of the following interdependent and essential elements, implementation of which will depend on the conditions present in each State party:

(b) Accessibility. The labour market must be open to everyone under the jurisdiction of States parties. Accessibility comprises three dimensions:

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality.[...]

**General Comment No. 15: The Right to Water (arts. 11 and 12), E/C.12/2002/11, 20 January 2002**

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (Art. 2, para. 2), and equally between men and women (Art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

**General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, 11 August 2000**

Non-discrimination and equal treatment

18. By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. (...)

COMMITTEE ON THE RIGHTS OF THE CHILD

**General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003**

The right to non-discrimination

6. States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.

**General Comment No. 3: HIV/AIDS and the Rights of the Children, CRC/GC/2003/3, 17 March 2003**

The right to non-discrimination (art. 2)

8. Of particular concern is gender-based discrimination combined with taboos or negative or judgmental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS related strategies, and in keeping with their obligations under the

Convention, State parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should in particular recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.



## **ANNEX II. INTERNATIONAL INSTRUMENTS**

### **Universal Declaration of Human Rights**

<http://www.ohchr.org/EN/Issues/Pages/UDHRIndex.aspx>

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 6

Everyone has the right to recognition everywhere as a person before the law.

#### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

#### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

#### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **International Covenant on Civil and Political Rights**

<http://www2.ohchr.org/english/law/ccpr.htm>

## **PART II**

#### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

#### Article 5

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

#### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 23

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **International Covenant on Economic, Social and Cultural Rights**

<http://www2.ohchr.org/english/law/cescr.htm>

## PART II

### Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

## PART III

### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

## **International Covenant on the Elimination of All Forms of Discrimination**

<http://www2.ohchr.org/english/law/cerd.htm>

## PART I

### Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

<http://www2.ohchr.org/english/law/cat.htm>

### **PART I**

#### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

## **Convention on the Elimination of All Forms of Discrimination Against Women**

<http://www2.ohchr.org/english/law/cedaw.htm>

### **PART I**

#### **Article 1**

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

## **Convention on the Rights of the Child**

<http://www2.ohchr.org/english/law/crc.htm>

### **PART I**

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;

## **Convention and Protocol relating to the Status of Refugees**

<http://www.unhcr.org/pages/49da0e466.html>

Article 1. - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

### **General Assembly Resolution, A/RES/63/182, 16 March 2009: Extrajudicial, summary or arbitrary execution**

6. *Urges* all States:

(b) To ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, such as racially motivated violence leading to the death of the victim, killings of persons belonging to national or ethnic, religious and linguistic minorities, killings of persons affected by terrorism, hostage-taking or foreign occupation, killings of refugees, internally displaced persons, migrants, street children or members of indigenous communities, killings of persons for reasons related to their activities as human rights defenders, lawyers, journalists or demonstrators, killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation, as well as all other cases where a person's right to life has been violated, and to bring those responsible to justice before a competent, independent and impartial judiciary at the national or, where appropriate, international level, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by State officials or personnel;



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asylum  
death  
decriminalization  
detention  
discrimination  
domestic violence  
forensic examinations  
freedom of assembly  
freedom of association  
freedom of expression  
gender expression  
gender recognition  
hate crimes  
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